REGISTERED No. D. 221

The Gazette of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 4] NEW DELHI, MONDAY, JANUARY 4, 1954

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 4th January 1954

S. R. O. 58.—In exercise of the powers conferred by the proviso to sub-rule (2) of rule 5 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, the Election Commission hereby directs that the following amendment shall be made in its notification No. 56/2/53-2, dated the 6th February, 1953, as amended by Notifications Nos. 56/2/53 and 56/2/53/5681, dated the 16th February, 1953 and 25th April, 1953, respectively namely:—

"Amendment

In column 2 of the Table appended to the said notification the entry 'Bow and arrow' against the entry 'Patiala & East Punjab States Union' in column 1, shall be numbered as (1) and the following entries shall be added:—

(2) Human Hand

(3) Standing Lion".

[No. 56/2/53(13)/143.]

P. N. SHINGHAL, Secy.

PRINTED IN INDIA BY THE MANAGER, GOVT. OF INDIA PRESS, NEW DELHI
AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1954

REGISTERED No. D. 221

The Gazette of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 5] NEW DELHI, TUESDAY, JANUARY 5, 1954

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 24th December 1953

S.R.O. 59.—Whereas the election of Shri Gopi Ramji Thete, as a member of the Legislative Council of the State of Bombay from the Nasik Local Authorities constituency of that Assembly has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Maniklal Amolakchand Bhatewara of House No. 972, Bohorpatti, Nasik City, Bombay State;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

ELECTION PETITION No. 2 OF 1953.

CORAM

1. Shri V. A. Naik, B.A. (Hons.), LL.B., *Chairman.*
2. Shri R. D. Shinde, B.A, LL.B., } *Members.*
3. Shri G. P. Murdeshwar, B.A., LL.B., }

In the matter of the Representation of the People Act, 1951,

And

In the matter of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951,

And

In the matter of the Election Petition presented thereunder by Shri Maneklal Amolakchand Bhatewara.

Bhatewara, Maneklal Amolakchand, residing at House No. 972, Bohorpatti, Nasik City, Taluka Nasik, District Nasik, State of Bombay—*Petitioner.*

Versus

1. Thete, Gopal Ramji, residing at Girnare, Taluka Nasik, District Nasik.
2. Sharma, Shivlal Nenuram, residing in Lonargalli, Ravivar Peth, Nasik City, Taluka Nasik, District Nasik.
3. Kale, Vithal Shriram, residing in Municipal House No. 205, Bhase Lane at Sinnar, Taluka Sinnar, District Nasik.

4. Durve, Anant Govind, residing in Municipal House No. 489, Sinnar, Taluka Sinnar, District Nasik.

5. Bhangare, Ramchandra Namdev, residing at Shinde, Taluka Nasik, District Nasik—*Respondents.*

Counsel Shri Pardiwala for the petitioner. Shri C. K. Gadgil and Shri B. C. Gadgil for Respondent No. 1. Shri R. B. Vispute and Shri V. K. Paranjpe for Respondent No. 2.

Respondents Nos. 3, 4 and 5 absent.

JUDGMENT

The petitioner was a candidate for the bye-election to the Bombay State Legislative Council from the Nasik Local Authorities' Constituency, which was held on 28th January 1953. Three nomination papers were filed by the Petitioner, one by Respondent No. 2, three by Respondent No. 3 and one each by Respondents Nos. 4 and 5. Respondent No. 1 filed one nomination paper on 18th December 1952 and another on 19th December 1952. The Returning Officer accepted one of the nomination papers of the Petitioner, one of the nomination papers of the Respondent No. 1 and the nomination papers of the Respondents No. 4 and 5. He however rejected all the nomination papers of Respondent No. 3. Thereafter Respondents Nos. 4 and 5 withdrew their candidatures before the date appointed for such withdrawal. In the result the election was contested by the Petitioner and Respondents Nos. 1 and 2.

On 29th January 1953, Respondent No. 1 was declared duly elected, he having secured 175 votes. The Petitioner and Respondent No. 2 secured 14 and 3 votes respectively.

The Petitioner has challenged the election in this petition on the following grounds:

(a) The said Returning Officer erred in rejecting all the three Nomination Papers (Nos. 8, 9 and 10) of the Respondent No. 3 under Section 36(2)(c) of the Representation of the People Act, 1951, on the ground that the proposer and seconder therein have subscribed more Nomination Papers than there were seats to be filled up, *i.e.*, one seat. This rejection of all the three said Nomination Papers is entirely illegal and improper. Having regard to the provisions contained in Section 36, sub-section 7(b) of the Representation of the People Act, 1951, the said Returning Officer should have accepted the first Nomination Paper of the said Respondent.

(b) The said Returning Officer erred in accepting the Nomination Paper (No. 7) of the Respondent No. 2 inasmuch as in items Nos. 7 and 8 of the said Nomination Paper, the said Respondent had not stated the name of the Assembly Constituency in the Electoral Roll of which his name was included or his serial number in the said roll. The said Returning Officer should have rejected the said Nomination Paper of the said Respondent.

(c) The Returning Officer erred in accepting the Nomination Paper (No. 7) of the Respondent No. 2 also inasmuch as the said Respondent was not qualified to be chosen to fill the said seat under the said Act in view of the fact that his name does not appear as a voter in the Assembly Electoral Roll of the Bombay State. The said Returning Officer should have rejected the said Nomination Paper of the said Respondent.

(d) The improper rejection by the said Returning Officer of all the three Nomination papers of Respondent No. 3 and/or the improper acceptance by the said Returning Officer of the Nomination Paper No. 7 of the Respondent No. 2 have/has materially affected the result of the said Election.

The Petitioner prayed on the above grounds that the election of Respondent No. 1 be declared illegal and set aside or in the alternative, that the election be declared to be wholly void.

2. Respondents Nos. 3, 4 and 5 have remained absent. The petitioner has made no claim against them.

3. The Respondent No. 1, who is the principal Respondent, contended that the Returning Officer did not err in accepting the nomination paper of Respondent No. 2; that the election had been contested on party lines; that the Returning Officer had ascertained from each candidate his party affiliation; that the Respondent

No. 1 was a candidate adopted by the Congress which was in a position to command the majority of votes and which in fact did succeed in doing so not merely in this constituency but also in the whole of the District and that neither the rejection of the nomination paper of Respondent No. 3 nor the acceptance of the nomination papers of Respondent No. 2, even if improper, did in fact materially affect the result of the election.

4. The respondent No. 2 denied the allegations of the Petitioner regarding his alleged disqualification to stand as a candidate and contended that the acceptance of his nomination paper by the Returning Officer was not improper and that in any case the acceptance of his nomination paper has neither affected the result of the election nor has prejudicially affected the Petitioner in any way.

5. The written statements had been filed before the Tribunal on the 1st of June 1953, and though there was an informal discussion regarding the issues to be framed and the nature and quantum of the evidence which the Parties intended to lead there was no suggestion or request for allowing any amendment to be made in the petition, as may, in the opinion of the Tribunal, be necessary for the purpose of ensuring a fair and effectual trial of the petition.

6. The Issues were framed on the 27th of June 1953 after a fairly long discussion and an amendment was made to issue No. 7 at the desire of the Petitioner on the 5th September 1953.

7. The questions that we have to decide are:

(1) Whether the Petitioner proves that the nomination papers Nos. 8, 9 and 10 of Respondent No. 3 were improperly rejected by the Returning Officer; or whether the Returning Officer should have accepted any of the said three nomination papers, *viz.* Nos. 8, 9 and 10, first received;

(2) Whether he further proves that the Returning Officer improperly accepted the nomination paper No. 7 of Respondent No. 2 by reason of the fact that items Nos. 7 and 8 in the nomination paper were not properly filled in.

(3) Whether the name of respondent No. 2 is entered as voter in the electoral roll of the Assembly of the Bomaby State.

(4) Whether respondent No. 2 was not qualified to be chosen to fill the seat.

(5) Whether the result of the election has been materially affected by reason of the improper rejection of the nomination papers Nos. 8, 9 and 10 of respondent No. 3.

(6) Whether the result of the election has been materially affected by reason of the improper acceptance of the nomination paper No. 7 of respondent No. 2.

(7) What order including order as to costs?

Our findings are: (1) Yes; the one received first should have been accepted; (2) No; (3) Yes; (4) He was qualified; (5) No; (6) No; (7) As per order below.

8. On the first question we have no hesitation in holding that the contention of the petitioner is right. Section 33(2) of the Representation of the People Act, 1951, provides that any person whose name is registered in the electoral roll of the constituency may subscribe as proposer or seconder as many nomination papers as there are vacancies to be filled *but no more*. In this case the vacancy to be filled was only one and therefore the same proposer and the same seconder could not subscribe more nomination papers than one. In fact however the same persons as proposer and seconder subscribed as many as three forms and the Returning Officer, in view of the words "but no more" thought that the nomination papers were invalid. He apparently did not advert to the further provision in the same connection, namely Section 36(7)(b) which clearly provides that where a person has subscribed, whether as proposer or seconder, a larger number of nomination papers than there are vacancies to be filled, those of the papers so subscribed which have been first received upto the number of vacancies to be filled, shall be deemed to be valid. The contention of the petitioner that the Returning Officer should have accepted one of the three nomination papers nominating respondent No. 3 as a candidate for election is therefore well-founded. Shri Gadgil did not seriously argue against this contention. We answer the first issue in the affirmative.

9. *Issue No.* 2.—The allegation in the petition which has given rise to this issue is contained in paragraph 7(b) of the petition. The objection is in the following terms:

> "The said Returning Officer erred in accepting the Nomination Paper (No. 7) of the respondent No. 2 inasmuch as in items Nos. 7 and 8 of the said nomination paper, the said respondent had not stated the name of the Assembly Constituency in the electoral roll of which his name was included or his serial number in the said roll. The said returning officer should have rejected the said nomination paper of the said respondent."

It is obvious that in the nomination paper No. 7 of respondent No. 2, which is at Ex. 98, in column 7, which requires the description of the constituency in which the candidate's name is enrolled as a voter, respondent No. 2 had stated the name of the constituency as Bombay Legislative Council, Nasik Local Authorities Constituency, and in column 8 he had given his number in that electoral roll as 106. Respondent No. 2 had not in columns 7 and 8 given the name of the constituency of the Legislative Assembly in which his name had been entered as a voter, nor has he given his number in that roll. During the trial, the petitioner led evidence to show that the Election Commission, India, had issued a Press Note dated 24th December 1951 (Ex. 52) in which certain directions had been issued for the guidance of the intending candidates while submitting nomination papers for elections to Legislative Councils. The material part of that Press Note is as under:

> "(1) *Constituency to be mentioned in entries 7 and 8 of the nomination paper:*
>
> Under Section 6(1) of the Representation of the People Act, 1951, a person, in order to be qualified to fill a seat in the Legislative Council of a State, has to be an elector for any Assembly Constituency in that State, and the law does not require that he should be a voter for any Council Constituency. It therefore follows that entries 7 and 8 in the nomination paper of a Council Candidate have to be filled with reference to the Assembly constituency and the roll thereof in which such candidate's name is registered.
>
> (2) *Entries* 1, 10 *and* 14.— In entry 1 of the nomination paper however the name of the particular Council Constituency in which the candidate is seeking election must of course be given. Similarly, in entries 10 and 14 relating to the proposer and seconder also, the serial numbers are to be given with reference to the particular Council Constituency electoral roll where the proposer's and seconder's names are registered. Under the law, the proposer and seconder of a candidate will have to be persons who are registered as voters in the same constituency from which the candidate is seeking election."

Mr. Pardiwalla, learned counsel for the petitioner, has strenuously argued that the nomination paper (Ex. 98) submitted by respondent No. 2 should have been rejected by the Returning Officer inasmuch as in column 7 and 8 respondent No. 2 had not described the constituency of the Legislative Assembly in which respondent No. 2's name as a voter has been included nor was his number in that roll also stated and reliance was placed for this view on the Press Note issued by the Election Commission (Ex. 52) which has been set out above.

10. On behalf of respondent No. 2, it was argued that the contention of the petitioner on this point is not well-founded. It was urged that the form of the nomination paper as is printed in Schedule 2 of the Representation of the People Act, 1951 (page 253 of the Manual of Election Law, issued by the Government of India, Ministry of Law) is a composite one meant for use by intending candidates to several legislative bodies and column 7 of this form refers to the constituency in the electoral roll of which the name of the candidate appears. The nomination paper forms which were issued to candidates who intended to contest a seat for the Bombay Legislative Council from the Local Authorities Constituency of Nasik and which are produced on the record (Exs. 93 to 103), would show, that column 7 is a simple translation of the English equivalent in the model nomination paper given in Schedule 2 of the Representation of the People Act, 1951, and it is not unlikely that persons intending to file nomination papers would understand from the phraseology used in column 7 that all that they have to state in filling that column is to state the particulars of the constituency for the Legislative Council and not necessarily the particulars of the constituency of the Legislative Assembly in which their names have been enrolled as voters and, therefore, so long as respondent No. 2 had entered as against column No. 7 the description of the constituency, *viz.* the Local Authorities Constituency of the Nasik District for the Council,

in which he is admittedly a voter, the omission on his part to state also the particulars regarding the Assembly Constituency in which his name also appears as a voter, need not be considered as a material irrgularity and the Returning Officer was justified in not rejecting the nomination paper on that score. It is true that a clear distinction has not been made in the form of the nomination paper between the eligibility of the candidate as against the eligibility of the proposer and the seconder, as stated in columns 7, 10 and 14. So far as the proposer and the seconder are concerned, in columns 10 and 14 each of them had to give the number of their name in the electoral roll of the special constituency in which a vacancy has to be filled under the provisions of section 33(2) of the Representation of the People Act, 1951. But so far as the candidate himself is concerned, it may be that his name may not have been enrolled as a voter in the special constituency which he intends to contest, as it is not necessary that a candidate should be a voter in the roll of the special constituency. But all that is necessary for his eligibility for being chosen as a candidate is that he is a voter in any constituency of the Assembly. If, however, in addition to his being enrolled as a voter in any constituency of the Assembly, which is a necessary qualification for the candidate to the Legislative Council, he is also enrolled as a voter in the special constituency of the Council, for which he intends to stand as a candidate, the question would be whether his omission to state in column 7 of the nomination paper the particulars of the constituency of the Assembly, in which he is enrolled as a voter, would invalidate the nomination paper when the candidate in question has stated as against column 7 merely the particulars of the special constituency of Council, in which he is enrolled as a voter, and has also stated correctly his number in that roll. This was the main issue for determination before the earlier Nasik Tribunal in Election Petition No. 250 of 1952. In that petition, however, the Returning Officer had rejected the nomination papers not on the ground that the candidates had failed to comply with the provisions of Section 33 of the Act [Section 36(2) (d)] but on the ground of the omission of the candidates to supply to the Returning Officer particulars of the Assembly Constituency and they had not asked for more time for being able to do so. In the present case, the petitioner had not been present at the time of the scrutiny and none of the other candidates had raised the objection which is raised in this petition as against respondent No. 2, nor had the Returning Officer raised such an objection on his motion. The Press Note issued by the Election Commission (Ex. 52), does no doubt contain certain directions issued from the office of the Election Commission for the guidance of candidates to the Legislative Councils in filling in the nomination papers. But the question arise whether this Circular in the form of a Press Note stands on the same footing as a provision in the Representation of the People Act, 1951, or in the rules issued thereunder or whether it is in the nature of a recommendatory direction not having the force of law. No provision of the law was pointed out to us on behalf of the petitioner that the directions issued in the Press Note of the Election Commission have legal sanctity. At most, it may be said that the Returning Officer for whose guidance the Election Commission had circulated the Press Note should have kept these directions in mind at the time when nomination papers are received by them under Section 33(1) of the Representation of the People Act, 1951, and the preliminary examination has to be made by them under sub-clauses (5) and (6) of the same provision. It was argued that in construing the term 'constituency' in column 7 of the nomination paper, it may be noted that Section 19 of the Act states that, unless the context otherwise requires, 'constituency' means a Council of States Constituency or a Parliamentary constituency or an Assembly Constituency or a Council Constituency, for the purpose of Parts IV and V, in which Section 33 and 36 are included. In sub-section (ii) of Section 2 of the Representation of the People Act, 1951 (relating to the interpretation of the words used in the Act), it is stated that, for the purposes of the Act, a Council of States Constituency, a Parliamentary Constituency, an Assembly Constituency, a Council Constituency, a Local Authorities Constituency, a Graduates Constituency and a Teachers Constituency shall each be treated as a constituency of a different class. A Local Authorities Constituency, therefore, is a constituency of a different class. Reading this definition in the light of the wording of Section 19, it is possible to argue that the word "Constituency" used in the nomination form means the Local Authorities Constituency in all the items and no other constituency, though there is some force in the argument of Mr. Pardiwalla for the petitioner that so long as the eligibility of the candidate to be chosen to contest a Council seat depends, among other things, upon his being a voter in the Assembly Constituency, that qualification has to be stated in column 7. But when we have in the nomination paper itself, what may appear to be a comprehensive phraseology—and this is strengthened by reference to the words used "in the electoral roll of the Constituency of which he is the Returning Officer" in sub-clause (6) of Section 33 of the Act— a Candidate might while filling this column, enter particulars of the special constituency of the Council and his number therein, if he is in fact a voter in that roll and the Returning Officer might then satisfy himself in a summary inquiry to be held under Section

33(6) that the candidate was in fact enrolled as a voter in any Assembly Constituency roll and was thus eligible to stand as a candidate. Mr. Pardiwalla in advancing his argument on this point had referred to the provision of Sub-clause (5) of Section 33 of the Representation of the People Act, 1951. That rule is as follows:—

> "On the presentation of a nomination paper, the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer and seconder as entered in the nomination paper are the same as those entered in the electoral rolls:
>
> Provided that the Returning Officer may—(a) permit any clerical error in the nomination paper in regard to the said names or numbers to be corrected in order to bring them into conformity with the corresponding entries in the electoral rolls; and (b) where necessary, direct that any clerical or printing error in the said entries shall be overlooked".

He argued that when the Returning Officer receives nomination papers, he has to satisfy himself about the names and electoral roll numbers and the reference to "rolls" instead of "roll" clearly suggests that the Returning Officer should have with him more than one roll. We think that in the very argument of Mr. Pardiwalla, there is a sufficient answer to his contention. The Returning Officer will have to keep with him the electoral roll of the special constituency from which he will have to verify the names and electoral numbers of the proposer and the seconder. But in case a candidate, like the petitioner, who is voter in an Assembly constituency and not a voter in the special constituency, sets out in column 7 of the nomination paper particulars of the Assembly constituency and his electoral number in that constituency, the Returning Officer will have also to keep with him the roll of that Assembly Constituency for verifying the name and electoral number of the candidate. If the candidate is, however, not entered as a voter in the roll of the particular territorial Assembly Constituency but in another Assembly Constituency, then the Returning Officer, if he has not with him the electoral roll of that constituency, can, under sub-clause (6) call upon the candidate to produce either that roll or a certified copy of an entry in such roll regarding his name and number. But when a candidate has his name in the electoral roll of the special constituency and mentions as against column 7 only the particulars of the special constituency and his electoral number in that constituency, the Returning Officer can, in a summary inquiry, upon an objection raised by another candidate or an objection on his own motion, call upon the candidate to state particulars about the Assembly constituency in which he is enrolled as a voter and then to verify the same in the manner stated above. It is to cover such cases that the word "rolls" in sub-clause (5) of Section 33 and the words "such roll" in sub-clause (6) of the same section have been designedly used. In this view of the matter, the wording of Column 7 of the nomination paper cannot be said to be either vague or ambiguous and column 7 of the nomination paper has been worded in such a comprehensive manner to cover all these cases. The question whether the omission of respondent No. 2 in not filling in column 7 of his nomination paper (Ex. 98), particulars about his number in the electoral roll of the Assembly Constituency was a failure to comply with the provisions of Section 33(1) and that the failure invalidates his nomination paper or whether the omission was of a technical defect or not a substantial character for which the Returning Officer need not have rejected the nomination paper thus presents little difficulty. We have given close consideration to what has been urged for the petitioner on this point but we are unable to hold that the omission of respondent No. 2 in giving the particulars of his number as well as the Assembly constituency roll was a defect of a substantial character requiring the Returning Officer to reject the nomination paper. We therefore find issue No. 2 against the petitioner.

11. We will deal with issues Nos. 3 and 4 together as both of them have bearing on each other. The petitioner had stated in the petition in paragraph 7(c) that the Returning Officer had erred in accepting the nomination paper of respondent No. 2 as the said respondent was not qualified to be chosen to fill the seat under the said Act in view of the fact that his name does not appear as a voter in the Assembly Electoral Roll of the Bombay State. Respondent No. 2 in his written statement (Exh. 21), had contended in para. 6 that his name does appear in the electoral roll of the Assembly constituency of the Bombay Legislative Assembly at No. 3464. On behalf of the petitioner the portion of the roll in which voters from Nasik Municipal Limits are enrolled has been produced at Ex. 75. At serial No. 3464 is the following entry:

> (3464 Sharma Shivlal Naturam (35) 533 Lonar Galli).

In the roll of the Local Authorities Constituency (Ex. 74), at the serial No. 106 the entry is as under:

(106 Nasik House No. 536 Lonar Galli—Sharma Shivlal Nenuram).

It is the contention of the petitioner that the voter whose name is mentioned at serial No. 3464 is not respondent No. 2. Respondent No. 2 has given evidence at Ex. 378 and he has examined some witnesses, including his elder brother Shivdew Nenuram Sharma (Ex. 370). There is also other evidence which shows that respondent No. 2 had been living in a house in Lonar Galli of Nasik City and that the father of respondent No. 2 and Shivdev had two names, Nanuram and Nenuram. Some post cards have also been produced showing that the name of the father of respondent No. 2 was sometimes stated as Nanuram and sometimes as Nenuram. There is also sufficient evidence to show that respondent No. 2 was living in house No. 533 in Lonar Lane. This is the house number referred to in the Assembly constituency roll mentioned above. The fact that respondent No. 2's father is described in the printed list as Naturam when it should have been Nanuram, clearly shows that there has been in this case a printing error. But the other particulars are sufficient to show the identity of respondent No. 2 with the voter at serial No. 3464. We are also satisfied that the House No. 536 in the entry at serial No. 106 in the roll (Ex. 74), is also a printing error for No. 533 and that the voter described in both these electoral rolls is respondent No. 2. It is needless to discuss the other evidence led for the petitioner on this point as also that produced on behalf of respondent No. 2. We are satisfied that the preponderance of evidence is in favour of respondent No. 2 and it does satisfactorily establish that he was a voter in the Assembly Constituency, *e.g.* the Nasik-Igatpuri Constituency.

12. In view of the finding on issue No. 3, issue No. 4 will have to be answered in the negative. Respondent No. 2 was a voter in an Assembly Constituency and therefore he was under Section 6(1) of the Representation of the People Act, 1951, qualified to be chosen as a candidate to fill a seat to the Legislative Council.

13. *Issue No.* 6.—In considering this issue, it will be necessary to notice that respondent No. 2 had in fact polled only three votes out of the total number of 192 votes actually cast at the bye-election. The position created by an improper acceptance of a nomination paper and the consequent participation of the candidate in the election is quite different from that of a candidate whose nomination paper is wrongly rejected and who is thus shut out altogether from the election. In the latter case, it is sometimes difficult to decide whether the result of the election would be materially affected by reason of the shutting out of a candidate from the election. But in a case where a candidate is wrongly allowed to contest the election, the question whether the result would be materially affected is a matter capable of being easily proved. Respondent No. 2 having polled only three votes, the only result upon the election was that the other candidates in the field had been deprived of only three votes. The difference in the votes of the petitioner and respondent No. 1 is as large as 161 (175-14). Even if the three votes polled by respondent No. 2 had been cast in favour of the petitioner, the result of the election would not at all have been affected, much less materially, as against the petitioner. The result would be that even if it is assumed that the nomination paper of respondent No. 2 had been wrongly accepted, there is absolutely no warrant for the view that the result had been materially affected by such improper acceptance of his nomination paper.

14. The next question is whether the result of the election has been materially affected by reason of the improper rejection of the nomination of Respondent No. 3. It is a significant circumstance that Respondent No. 3 has at no time made any grievance against the improper rejection of his nomination. Not only has he not joined the petitioner in making this election petition but has, though duly served with notice, failed to appear before us and complain against the improper rejection. As we shall presently show, this is an important, though not a decisive circumstance in judging whether the election has been materially affected.

Section 100(1) of the Representation of the People Act, 1951, provides that if the Tribunal is of opinion:

(a) that the election has not been a free election by reason that the corrupt practice of bribery or of undue influence has extensively prevailed at the election; or

(b) that the election has not been a free election by reason that coercion or intimidation has been exercised or resorted to by any particular community, group or section on another community, group or section, to vote or not to vote in any particular way at the election; or

(c) that the result of the election has been materially affected by the improper acceptance or rejection of any nomination,

the Tribunal shall declare the election to be wholly void.

15. We are here concerned with only the provisions of clause (c) but we have reproduced the whole sub-section (1) to compare its provisions with the rules of the Common Law of England on which strong reliance was placed by Shri Pardiwala for the petitioner. How far we can follow or take as our guide the Common Law of England in construing the provisions of an Indian statute has often laid down by the Privy Council. In *Abdul Rahim* Vs. *Abu Mahamad,* 30 Bom. L. R. 774 Lord Sinha in delivering the Judgment of the Judicial Committee observed that "it is a sound rule of interpretation to take the words of a statute as they stand and to interpret them ordinarily without any reference to the previous state of the law on the subject or the English Law upon which it may be founded". Admittedly, clause (c) referred to above is not founded on any rule of English Law. Much more therefore any reference to the Common Law of England would be irrelevant. Shri Pardiwala also argued that cases under the Ballot Act of England which embodies provisions corresponding to those of Section 100(2)(a) and (c) of the Indian Act deserve to be consulted in interpreting the clauses in question. It is to be noted, however, that the words used in Section 100 are throughout "has been materially affected", while in the English Statute the words used are "has not been materially affected". Apart from this circumstance, it has been laid down by the Privy Council in two cases arising under the Indian Income Tax Act, that decisions of the English Courts are not, as a rule, useful guides on the construction of the Indian enactment as the English and Indian Statutes are not in *pari materia.* In *Commissioner of Income Tax Bengal* V. *Shaw Wallace & Co.,* 34 Bom. L.R. 1033, Sir George Lownds observed as follows (page 1037 bottom):—

> "Again Their Lordships would disregard altogether the case law which has been so painfully evolved in the construction of the English Income Tax Statute both the cases upon which the High Court relied and the flood of other decisions which has been let loose in this Board. The Indian Act is not in *pari materia;* it is less elaborate in many ways, subject to fewer refinements, and in arrangement and language it differs greatly from the provisions with which the Courts in this country have had to deal".

Much to the same effect are the observations of Lord Macmillan in *Bijoy Singh* V. *Commissioner of Income Tax, Calcutta,* 35 Bom. L. R. 811 at page 814 (bottom):—

> "and they (Their Lordships) would further add, as they have had occasion to do more than once of late, that the invocation of the Imperial Income Tax Code and of decisions pronounced upon it are apt to be misleading in the interpretation of Indian Income Tax legislation which is framed on other and much simpler lines."

In yet another case under the same Act, *Gopal Saran* V. *Commissioner of Income Tax, Bihar,* 37 Bom. L.R. 817 Lord Russell repeated the view that little could "be gained by trying to construe an Income Tax Act of one country in the light of a decision upon the meaning of the Income Tax legislation of another".

16. These observations apply with greater force to the present case, since, as we have already pointed out, the words of the Indian Statute which have to be construed, *viz.* "has been materially affected" are not the same as the words in the English Statute. As pointed out by the Tribunal which decided the petition of Moinuddin Harris (*vide* Bombay Government Gazette 1952, Part I, page 1293) there is a material difference between the English Law with regard to elections and the law which prevails in this country on the same subject. The observations of the Tribunal are worthy of repetition:

> "Under the Indian Law if a petitioner has to bring his case within the provisions of Section 100(2) (c), mere proof of non-compliance with even the mandatory provisions of the Constitution or of the Representation of the People Act is not enough, even though such non-compliance or gross irregularity may possibly have affected the result of the election. The provisions of Section 100(2)(c) require the petitioner to prove that the result has been materially affected by such non-compliance or irregularity, while under the English Law an election tribunal would be justified in setting aside the election if it were satisfied that there was a likelihood that the result of the election may have been affected by the non-compliance or the irregularity "*vide* the decisions of the election tribunals in Malik Barkatalli *vs.* Moulvi Moharamaly Chisti and Choudhari Amarsingh *vs.* Pandit Nanak Chand cited in Hammond's Election Cases, pp. 469, 473, 219, 221 and Shrivastava's Indian Elections and Election Petitions, Vol. II, p. 214. This difference arises

from the use in Section 100 of the words "the result of the election has been materially affected" in the positive form, instead of the words "such non-compliance or mistake did not affect the result of the election" as were used in Section 13 of the Ballot Act which have now been replaced by the words "that the Act or commission did not affect its result" in Section 16(3) of the Representation of the People Act, of 1949. In framing these provisions in the negative form, the English legislature seems to have followed the practice which prevailed in applying the common law of Parliament to such matters previous to such enactments. In India, however, in spite of the fact that this material difference in the election law as prevailing in England and in this country was specifically noted by election tribunals so long ago as 1921, in the cases in which we have previously made reference, the Indian Legislature having the English legislation before it, has considered it fit to enact even the subsequent legislation by repeating the same provisions which existed in the previous Indian Legislation. The words in the positive form as used by our legislature in Section 100 are such that it is almost impossible for us without doing serious violence to the language to convert them into a negative provision, such as has existed in England, which alone would justify the onus being thrown on the respondent to show that the non-compliance with the law or the irregularities charged had not affected the result of the election. To do any such violence to the language used in Section 100 would not be in consonance with the canons of construction which have normally to be applied in the interpretation of statutes. (*Vide* Maxwell on Interpretation of Statutes, 9th Ed. p. 2—6)."

In the above case the question under Section 100(1)(c) had not arisen for decision. But as it had been elaborately argued, the Tribunal made the following observations:

"In the case of the improper rejection of a nomination it would be practically impossible for the aggrieved candidate to prove positively that the result of the election has been materially affected unless he was able and was allowed to call a very large number of persons who have actually voted to depose that they would have voted for him in such number as to cast a majority of votes on which he could have been elected. In England and in Municipal elections in Bombay the normal procedure is to declare an election void in all cases of improper rejection of a nomination as the electorate would not have had the opportunity of deciding whether to vote or not for the particular candidate by reason of the improper rejection of his nomination. As regards the improper acceptance of a nomination, if the particular candidate whose nomination is so accepted happens to secure a majority of votes, then it would be obvious that the result of the election has been materially affected; but in any other case, the same difficulty would arise in proving that the result of the election has been otherwise materially affected as in the case of the improper rejection of a nomination. Although we recognise all the difficulties that would arise in such cases, we still find it impossible to construe the clear words used by the legislature in any other manner than their normal import. If there is a defect in the legislation which calls for a remedy, it cannot be corrected by a decision of this tribunal and we must leave it to the legislature to consider whether it would not be advisable to put the law in this respect on the same footing as the law prevailing in England at present. So far as Section 100 of our Act is concerned, the way in which the relevant provisions have been framed by the Indian Legislature is such that we cannot but hold that in such cases the onus remains on the petitioner to show at least a reasonably strong likelihood of the result of the election having been materially affected by the non-compliance with the law or irregularity of which he complains as when a nomination has been improperly rejected, before he can ask the tribunal to act under that Section."

17. Shri Pardiwala has in the alternative contended that since under the Indian Statute, it is practically impossible for the petitioner to prove that the result of the election has been materially affected by the improper rejection of a nomination, the Tribunal should as a matter of course declare the election void as the English Courts do according to him under similar circumstances. In other words, he contended that the improper rejection of a nomination should *ipso facto* invalidate the election. The short answer to this argument is that the legislature has not so enacted. If it had so intended, it would have said so in express words instead of providing that the Tribunal should be satisfied that the result of the election has been materially affected by the improper rejection of a nomination. The intention of the legislature must be gathered from the words actually used in the enactment and though

the words used in the section are likely to cause hardship to the petitioner in most cases, it is not permissible to us to depart from giving effect to the plain meaning of the words.

18. In cases where the electors had no opportunity to vote at all, it may be permissible to the Tribunal to infer that the result of the election has been materially affected. In the earlier petition tried by the Election Tribunal at Nasik last year No. 252 of 1952 (*See* Bombay Government Gazette, dated 27th November, 1952, Part I, Page 6915), there was no election at all. The nominations of all the candidates except one had been rejected, with the consequence that the remaining candidate was declared elected. Having regard to the facts of that case, it was reasonable to hold that the electors had no opportunity of electing the candidate which the majority might prefer and that in the absence of such an opportunity, the result of the election had been materially affected. It would seem that no such presumption arises necessarily when an election in fact takes place. It may be that in given circumstances, such a presumption may arise but it would all depend on what the facts are in each case. Shri Pardiwala contends that the presumption should be drawn in every case, whether an election takes place or not, and that this presumption is irrebuttable. He stated that this position was implicit in the Rules of the Common Law of England but he could refer to no rule nor decision which fairly gave rise to such an implication. The lucid statement of Lord Caleridge, C.J. in *Woodward* vz. *Sarsons* (1875) 10 C.P. 733 at page 743 on the Common Law of England relating to elections contains nothing to warrant expressly or impliedly the proposition which Shri Pardiwala desires us to accept. The statement is as follows:—

> "An election is to be declared void by the common law applicable to parliamentary elections, if it was so conducted that the Tribunal which is asked to avoid it is satisfied, as matter of fact, either that there was no real electing at all, or that the election was not really conducted under the subsisting election laws. As to the first, the tribunal should be so satisfied, *i.e.*, that there was no real electing by the constituency at all, if it were proved to its satisfaction that the constituency had not in fact had a fair and free opportunity of electing the candidate which the majority might prefer. This would certainly be so, if a majority of the electors were proved to have been prevented from recording their votes effectively according to their own preferences, by general corruption or general intimidation, or by being prevented from voting by want of the machinery necessary for so voting, as, by polling stations being demolished, or not opened, or by other of the means of voting according to law not being supplied, or supplied with such errors as to render the voting by means of them void, or by fraudulent counting of votes or false declaration of numbers by a returning officer, or by other such acts or mishaps. And we think the same result should follow, if by reason of any such or similar mishaps, the Tribunal without being able to say that a majority had been prevented, should be satisfied that there was reasonable ground to believe that a majority of the electors may have been prevented from electing the candidate they preferred. But, if the tribunal should only be satisfied that certain of such mishaps had occurred, but should not be satisfied either that a majority had been, or that there was reasonable ground to believe that a majority might have been, prevented from electing the candidate they preferred, then we think that the existence of such mishaps would not entitle the tribunal to declare the election void by the common law of Parliament".

Mr. Pardiwala also referred to the decision of the Election Petitions Commission, Punjab, dated 10th March 1939, in the Multan Case No. 2, reported in Doabia's Indian Election Cases Vol. II, at page 302. There the nomination papers of the three petitioners had been wrongly rejected and the respondent was declared elected. The facts of the case were very similar to those of the first Nasik case referred to above and neither the decision nor the observations of the Commissioners are contrary to the view we have taken regarding the construction of Section 100(1) (c) of the Representation of the People Act, 1951. It was a case under the Punjab Legislative Assembly Electoral Rules and the issue No. 2 raised does not seem to be one as required by Section 7(c) of the Government of India (Provincial Elections) Corrupt Practices and Election Petitions Order, 1936, the terms of which are identical with those of Section 100(1) (c) of the

Representation of the People Act, 1951. The issue, as raised, was in these terms:

> "If so, has not the result of the election been materially affected by the improper rejection".

The observations of the Commissioners clearly show that they framed the issue on principles analogous to those of the English law. It would be useful to reproduce them, in order to make out that Shri Pardiwala cannot derive any assistance from this case:

> "The onus of this issue", the Commissioners observe, "was on the respondent and he has not produced a scintilla of evidence to discharge the burden which lay heavily upon him. If the nomination paper is improperly rejected, there is in the very nature of things, the strongest possible presumption that the result of the election has been materially affected, as no one can possibly foresee what would have been the result if that candidate had been allowed to fight the election. This view of the law is supported by the Calcutta South Case (Hammond's Election Cases, page 261) C.P.C. and I Case (*ibid* page 282) and Golaghat case (*ibid* pages 378 and 379). The presumption arising from improper rejection of nomination papers referred to "above, has not been rebutted in any way, and we hold the result of the election has been materially affected thereby".

19. It is to be noted that the observation in the last sentence negatives the contention of Shri Pardiwalla that the presumption is irrebuttable. The cases reported in Hammond's Election cases on pages 261, 282 and 378 were not under Section 7 of the Government of India Order, 1936, and in each of them there was no election at all.

20. Shri Pardiwalla then relied upon certain observations of Chief Justice Chagla in the case of *Shankar N. Karpe* vs. *The Returning Officer, Kolaba District*, 54 Bombay, L.R. 137, as laying down the proposition he was contending for. As observed by the Privy Council in *Hari Baksh* v. *Babulal* 5 Lahore 92 at page 102;

> "to understand and apply a decision of the Board or of any Court it is necessary to see what were the facts of the case in which the decision was given and what was the point to be decided".

In Shankar Karpe's case, the point which we are now considering did not arise for decision at all. The Petitioner Shankar had applied to the High Court under Article 226 of the Constitution for a writ of mandamus against the Returning Officer of the Kolaba district alleging that the Officer had wrongfully rejected his nomination paper. The sole question considered in the case was whether the High Court had power to grant the writ under Article 226 of the Constitution and it was held that the power was taken away by Article 329(b) of the same Constitution. During the argument it was urged for the petitioner Shankar that what he complained of was the violation of his right to stand as a candidate at the election to be held that that right he could assert only at that stage, that it was only the High Court that could give him relief, that the right which he would be able to assert after the election was not the same because it would not be sufficient for him to establish that his nomination was improperly rejected and that he would have further to establish that the election had been materially affected by such rejection. To this argument it would have been enough to answer that the only remedy which the petitioner could seek was under Section 100(1) (c) of the Representation of People Act, the power of the High Court to grant him any extraordinary relief being taken away by Article 329(b) of the Constitution. But the learned Chief Justice in meeting the argument of the Petitioner Shankar observed as follows:

> "I must frankly confess that I find it difficult to visualise how any tribunal can possibly come to a conclusion that when a candidate's nomination paper has been improperly rejected, it does not materially affect the result of the election. How the electors would have voted and what the result of the election would have been if the petitioner had been a candidate would be entirely a matter of speculation and no Tribunal, however well-versed in election matters, could ever decide whether the result of the election would not have been different if the petitioner had stood as a candidate. Therefore, in our opinion, whatever the case may be when a nomination paper has been improperly accepted, as far as wrongful rejection of a nomination is concerned, substantially the right of the petitioner is safeguarded under the Representation of the People Act".

21. As we have already said, the precise point we are now considering did not arise for decision. The observations referred to above do not purport to decide anything and are in any case *obiter*. Even so, we should have treated the observations as entitled to great respect and relied on them, if the circumstances of the present case had been visualised by His Lordship while making them. In this case, the person whose nomination has been rejected has made no complaint against the rejection. He has not joined the Petitioner in filing the election petition; nor has he appeared before us to say whether he supports or opposes the petitioner. The constituency consists of only 220 voters. The voters are all of them elected members of the local authorities. The respondent No. 1, who was a candidate put up by the Congress Party, secured 175 out of 192 votes validly cast. The petitioner and the other candidates had not been backed up by any party. They were independent candidates. Respondent No. 3 whose nomination was rejected was a congressman and would have had to fight against a congress candidate if his nomination had not been rejected. Respondents Nos. 4 and 5 withdrew their candidature before the election. The petitioner and the respondent No. 2 secured only 14 and 3 votes respectively. If the learned Chief Justice had visualised a case like the one before us, we think that he would have in all likelihood, mentioned it as an exception to his general remarks. In any case, we are not prepared to understand His Lordship as laying down as an inflexible rule that whenever a nomination is improperly rejected, the Tribunal must hold that the election has been materially affected. Section 100(1) of the Representation of the People Act provides that the Tribunal shall declare an election wholly void *if it is of opinion* that the result of the election has been materially affected. The words underlined by us imply that the opinion has to be formed in each case on its own facts.

22. The circumstance that the respondent No. 3 whose nomination has been rejected does not complain against the rejection is as we have already stated, material in judging whether the election has been affected. Shri Pardiwalla contends that even if he makes no grievance, any elector whose right to vote for him was affected can make a grievance. He rightly contends that every elector has an interest in the election and can file a petition complaining a wrong rejection of nomination. The petitioner has examined a witness, whose evidence (Exh. 105) does not really help him. He is a voter and did vote at the bye-election. He says that though he exercised his vote, his franchise was affected because he wanted to vote for respondent No. 3. He was a congressman but resigned from the Congress towards the end of 1950. He contested the election to Parliament in 1952 as a Socialist candidate. Respondent No. 3 was also a congressman but left the party owing to serious differences. Respondent No. 3 is however not a member of the Socialist party. The witness admits that the Socialist Party had set up candidates for all the seats assigned to the district to the Bombay Legislative Assembly but all of them had failed. Why the witness being a Socialist wanted to vote for respondent No. 3 who was not a Socialist has not been explained. He says he met the respondent No. 3 at Nasik, seven or eight days after the rejection of the latter's nomination. He did not think it necessary to tell respondent No. 3 that he should make a petition because his own right and the right of others holding his view were curtailed. He also did not think it necessary to file an election petition though his franchise was curtailed. In view of these admissions and in view of the fact that he did vote at the bye-election, his pretence that he wanted to vote for respondent No. 3 should be received with caution. A person who really wanted to vote for respondent No. 3 alone would have refrained from voting at all. The petitioner should have examined respondent No. 3 to show that he continued to be keen on contesting the election even after his nomination was rejected. The respondent No. 3 is a practising pleader at Sinnar. He was for long a congressman and must have ascertained that the voters who were over-whelmingly on the side of the Congress would not support him in sufficient numbers. It is reasonable to infer that he abandoned the idea of contesting the election. Otherwise there is no explanation why he should remain inactive and even absent at the hearing of this petition. In such a case, it cannot be said that the right of any voter has been curtailed. The voters would be in the same position as when a validly nominated candidate withdraws from the election. We have therefore reached the conclusion that when a person whose nomination has been wrongly rejected makes no protest by filing an election petition or otherwise, no inference can arise that the election has been materially affected. Shri Pardiwalla has relied on a Full Bench case reported in A.I.R. 1952 Madhya Bharat at page 97. In that case also, as in Shankar Karpe's case, the two petitioners, whose nominations had been rejected by the Returning Officer, had applied to the High Court of Madhya Bharat under Article 226 of the Constitution for a writ of mandamus, and the High Court held that its jurisdiction to entertain such an application had been taken away by

Article 329(b) of the Constitution Act. The point with which we are concerned did not arise there at all. Both the applicants were persons whose nominations had been rejected and there was no occasion for making any observation regarding a person who was not aggrieved and who had made an election petition. Incidentally, Dixit J., in his judgment made observations as follows:

> "The words 'the result of the election has been materially affected' have been used, in my opinion, to cover the cases of those election petitions where the person whose nomination paper has been improperly rejected, is himself not the petitioner and is not aggrieved by the order of the Returning Officer rejecting the nomination paper or is not interested in having the election declared void so as to enable him to stand as a candidate in a fresh election. A remedy is therefore provided to a person whose nomination paper has been improperly rejected to have the election declared void by the Special Tribunal on the ground of the improper rejection of the nomination".

23. Shri Pardiwalla relies on the first sentence, while Shri Gadgil says that the second sentence is inconsistent with the first. Probably the word "not" is not printed by mistake before the words "to cover the cases". Any way as there is no considered judgment on the point which did not arise in the case and may not have been argued at all, we are not prepared to follow the observations.

24. The discussion so far leads us to the conclusion that under the statute the petitioner has to discharge the burden of showing that the result of the election has been materially affected. He has not admittedly discharged the burden, nor has he been able to claim the benefit of any presumptions in that connection. Shri Gadgil for his client, the Respondent No. 1, however, took upon himself, as a matter of abundant caution, the task of leading evidence to show that the result has not in fact been materially affected. He has examined 126 witnesses who had voted at the bye-election and who deposed that they would not have voted for respondent No. 3. The voters in the constituency were all of them elected members of Municipalities, Local Board, and Cantonment Board of the District. Of the 220 voters in the constituency, 196 had actually voted (Ex. 107). The remaining 34 voters had not gone to the polls. No proof has been adduced that the abstainers would have voted for respondent No. 3 if he had been in the field. Out of the 192 votes validly cast, 175 were cast in favour of respondent No. 1. A great majority of these were sought to be and were actually proved to be Congressmen or "Congress-minded". Only 4 out of the 126 witnesses examined by the respondent No. 1 are not congressmen. They deposed that they were sympathisers and would not have voted for respondent No. 3. We do not propose to take into consideration the evidence of these four witnesses as it has been objected to and rightly. As for the other 122 witnesses, we were not much impressed by the objections put forward by Shri Pardiwalla. In the first place, Shri Pardiwalla contended that no statement as to the witnesses being Congressmen should have been allowed. We had allowed such statements to go in subject to the objection of the petitioner. Founding himself on certain observations in two cases reported in III O'malley and Hardcastle at pages 1 and 61, he argued that no questions regarding the political opinions were permissible. In the first case—the North Durham case—a witness was asked by the petitioner's counsel whether he belonged to the Red party. The query which the witness made, "Am I obliged to say?", Mr. Justice Grove observed:—

> "You are not obliged to say how you voted, and I think I should rule that you are not obliged to say which party you belong to, as that may be a step to the other question. If a witness is reluctant to answer this question it is not desirable to press him. No doubt the question has been allowed a great many times, and if a man holds himself out as belonging to one party, it is admissible question to ask him, but if it is a matter confined to his own mind, I do not think it has ever been allowed."

Later on, he further observed:

> "It has been asked in this sense before me whether a man ostensibly belongs to a particular party, that is admissible."

In our opinion, the case instead of being helpful to Shri Pardiwalla is directly opposed to his contention. A person who is a member of a political party can be asked whether he belongs to that party. It is only when his political opinions are confined to his own mind, that the question is inadmissible. Shri Pardiwalla asks us to interpret the word "obstensibly" in a way inconsistent with its natural meaning. He says that it is only when a person holds a high position in the party that he obstensibly belongs to that party. We are however clear that it is enough for a person to be a member of a party to enable him to hold himself

out as belonging to that party. The other case reported at page 61 of the same volume of O'malley and Hardcastle does not help Shri Pardiwalla either, as we read the report. A witness, who was a voter but had not voted, was called to prove that he had sent by the Respondent to Rotterdam on the day before the election, in order that he might not be able to vote. He was asked by Mr. Matthews for the petitioner:

"Are you a blue or yellow voter?"

Mr. Justice Lush observed:

"That will not do. Surely that is a violation of the Ballot Act, Section 12."

Mr. Pardiwalla relies strongly on this observation and contends that since Section 12 of the Ballot Act is in the same terms as Section 94 of the Representation of the People Act, 1951, we ought to interpret the section of the Indian statute in the same way as Mr. Justice Lush did. We however find it difficult to accede to Shri Pardiwalla's contention for two reasons. In the first place, the objection had been taken to a question asking a witness who had not voted at all as to what opinion he held. And when Mr. Tennant for the respondent said, referring to the North Durham case, that a voter might only be asked how he had voted in the event of his having openly avowed his political opinions, Mr. Justice Lush observed,

"That is the conclusion we come to."

We think therefore what Mr. Justice Lush actually ruled was that a witness who has voted can be asked what political opinions he obstensibly held. Secondly Mr. Pardiwalla's contention is not warranted by the wording of Section 94, which provides that no witness or other person shall be required to state *for whom he has voted at an election.* The section must be strictly construed since it curtails the right of a witness to state a fact. The prohibition in the section is directed only against a statement as to how a witness or other person *has voted* at an election. It is true that the marginal note is expressed in wider terms. But we are definitely of the view that the marginal note cannot control the meaning or widen the scope of the Section. In *Thakurain Balraj* v. *Rai Jagatpal,* 11 Bombay Law Reporter 516 (P.C.), Lord Macnaughten laid down as follows, page 524:—

> "It is well settled that marginal notes to the Sections of an Act of Parliament cannot be referred to for the purpose of construing the Act. The contrary opinion originated in a mistake and it has been exploded long ago. There seems to be no reason for giving the marginal notes in an Indian statute any greater authority than the mariginal notes in an English Act of Parliament."

Mr. Justice Rangnekar felt bound by this decision when deciding the cases reported in 39 Bombay, L.R. 203, though Maxwell laid down a contrary proposition and the decisions in India were in consonance with the conclusions set out by Maxwell. He thought that the true rule was one which was laid down by Collins M.R. in (1904) 73 L.J.K.B. 1006:—

> "The side-note, also, although it forms no part of the Section, is of some assistance, inasmuch as it shows the drift of the Section."

In *Ramkrishna* v. *Bapurao,* 40 Bombay, L.R. 390, Rangnekar and Sen, J.J., expressed the view that though it was permissible to the Court to refer to marginal notes as aids in interpretation of statutes, it had never been supposed that where a section is plain on the express language of it, the plain meaning should be curtailed by any marginal note. If as the authorities hold that we cannot travel beyond the section, we must hold that what is prohibited in the section is a statement by a witness how he voted at an election. We use the word "Prohibited" advisedly, because in an interlocutory order we stated that a witness could not even voluntarily make such a statement. The word used in the section is "required". Shri Gadgil had argued that the word meant "obliged" or "compelled" and claimed liberty for a witness to state voluntarily how he voted. There being several meanings of the word "require", we held having regard to the marginal note "secrecy of the Ballot not to be infringed", that a witness could not be permitted to state even voluntarily how he voted at an election. Some of the witnesses examind by Mr. Gadgil had stated that they had voted for respondent No. 1. The statements had been taken down subject to the petitioner's objections but were disallowed after we passed the order referred to above. In the result, then, we hold that there can be no objection under the statute to a witness stating that he belongs to a political party and that party obligations required him not to vote for a person not chosen by his party.

25. Shri Pardiwalla then contended that the claim of the witnesses that they are members of the Congress or of Congress parties in the Local Bodies should not be accepted without proof of their admission to the organisations, and he said that if we did so we would be encouraging any man in the street to say falsely that he belongs to a party. In making this contention, he did not advert to the fact that the witnesses are not men in the street but are persons who, as elected members of Municipalities and Local Boards, had a status in life. The very fact that they enjoy the confidence of hundreds and thousands of their fellowmen comes to their aid initially on the point of trustworthiness and unless we find something contrary elicited in cross-examination, we shall not be wrong in accepting their claim. In fact, in the case of most witnesses, evidence has been given which we consider sufficient to prove that they are congressmen. Applications made by several of them to the District Congress Committee to adopt them as Congress candidates for election to Municipalities and Local Boards have been produced. Chairman of the Congress parties in some Municipalities and Local Boards have given evidence to show that some of the witnesses are members of those parties. A Secretary of the Congress organisation has also produced a list of members which proves that some of the witnesses are congressmen. It is only in the case of a very few witnesses that no such evidence is given. On the whole, all the witnesses impressed us as trustworthy when they said that they belonged to or were allied with the Congress organisation or party.

26. Shri Pardiwalla also objected to reading as evidence the statements of witnesses that they would not have voted for Respondent No. 3, as he was not a Congress candidate. Such statements, he argued, were inadmissible in view of the implications of Section 94 and observations of Mr. Justice Lush in III O'malley and Hardcastle at page 63. We have already stated that the provisions of Section 94 and the observations of Mr. Justice Lush are limited in scope. We had to consider this question, at the instance of the petitioner, when Shri Gadgil stated that he would examine a large number of witnesses to prove that they would not have voted for Respondent No. 3. It was only after he satisfied us that he could lead evidence as to the state of mind of the witnesses in reference to a matter in question under Section 14 of the Evidence Act read with Explanation I thereof and that neither the case in III O'malley and Hardcastle nor Section 94 of the Representation of the People Act, 1951, precluded him from leading such evidence that we refused to make an order under Section 90(2), second proviso. We adhere to the opinion we then formed and hold that the evidence objected to by Shri Pardiwalla is relevant and admissible. The only question now to be decided is whether the witnesses can be believed when they say that they would not have voted for Respondent No. 3. Shri Pardiwalla suggested that the ballot system made it possible for a member of a party not to vote for a candidate of that party and that conceivably there might be many cases of disloyalty to the party. He therefore asked us not to attach any value to that evidence, as there was no certainty whether they would not have voted for respondent No. 3. It is true that when a witness who has not voted says that he would have voted or would not have voted for a particular candidate, his evidence may not be taken at its face value. Here the facts are different. The witnesses say that they were under party obligations and that they had actually voted. There is therefore no reason why we should not accept their word as to the existence of their state of mind on the election day. It is after all a matter of appreciation of evidence and in view of the fact that their evidence is corroborated by the number of votes secured by respondent No. 1 coupled with the fact that respondent No. 3 had abandoned the idea of contesting the election, it would be reasonable to hold that the 122 witnesses of the respondent No. 1 would not have voted for respondent No. 3. In other words, respondent No. 3 would not have been able to secure the majority of votes.

27. In the result we have to hold that not only has the petitioner failed to prove that the result of the election has been materially affected by reason of the improper rejection of respondent No. 3's nomination but that the respondent No. 1 has proved, though this burden is not on him, that the result of the election has not been materially affected. The petition therefore deserves to be dismissed.

28. In awarding costs, we take into account the fact that the petitioner had reasonable grounds for seeking a decision on the question whether the improper rejection of a nomination *ipso facto* invalidated the election subsequently held. The observations in A.I.R. 1952 Madhya Bharat 97 and 54 Bom. L.R. 137, though *obiter*, were calculated to encourage the petitioner to believe that he had an arguable case. It is true that the respondent No. 1 has had, for no fault of his, to undergo the worry and expense of the longdrawn trial of this petition. Nevertheless, we think that it would not be proper to saddle the petitioner with the costs

of respondent No. 1. The case of respondent No. 2 stands on a different footing. The petitioner has failed to prove that his nomination was improperly accepted. The identity of his name and the validity of the entry in the roll of the Bombay Legislative Assembly constituency had been attacked and he had therefore to defend a matter of vital importance to him. We consider that he is entitled to his costs and we direct that the petitioner do pay to respondent No. 2 Rs. 150 as his costs.

ORDER

The petition is dismissed. The petitioner do pay Rs. 150 to respondent No. 2 as his costs. The petitioner and respondent No. 1 do bear their own costs.

The 14th December 1953.

(Sd.) V. A. NAIK, *Chairman.*

(Sd.) R. D. SHINDE, *Member.*

(Sd.) G. P. MURDESHWAR, *Member.*

The 14th December, 1953.

[No. 82/2/53/9133.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.

PRINTED IN INDIA BY THE MANAGER, GOVT. OF INDIA PRESS, NEW DELHI AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1954

REGISTERED No. D. 221

The Gazette of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 6] NEW DELHI, THURSDAY, JANUARY 7, 1954

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 6th January 1954

S.R.O. 149—In pursuance of rule 11 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, the following is published for general information :—

FORM 5

(Rule 10(3) and 11]

Election to the House of the People from the Sibsagar North Lakhimpur Constituency

List of valid nominations.

Final list of candidates for election.

Serial No.	Name of candidate	Address of candidate	Symbol assigned to the candidate, if any.
1.	Barbarua, Khagendra Nath	Maut Gaon P.O. Namtidole	A cultivator winnowing grain.
2.	Chaliha, Bimla Prasad	Sibsagar Town P.O. Sibsagar	Two bulls with yoke on.
3.	Gogoi, Padmeswar	Rajbari, Uzanbazar P.O. Gauhati (Assam)	Hut
4.	Sarwan, P. M.	Toklai Village, Cinnamara, P.O. Jorhat,	Scales.

NOTE : The poll will be taken between the hours of 8 A.M. and 4 P.M. on 31st January, 1954, at the polling station to be notified separately.

Place : Sibsagar.

A. K ROY,
Returning Officer.

Date 29th December, 1953.

[No. 100/1/9/53.]

P. N. SHINGHAL,
Secretary to the Election Commission.

PRINTED IN INDIA BY THE MANAGER, GOVT. OF INDIA PRESS, NEW DELHI AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1954

REGISTERED No. D. 221

The Gazette of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 7] NEW DELHI, THURSDAY, JANUARY 7, 1954

MINISTRY OF FOOD AND AGRICULTURE

NOTIFICATION

New Delhi, the 7th January, 1954

S.R.O. 160.—In exercise of the powers conferred by section 3 of the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), the Central Government is pleased to direct that notification No. S.R.O. 2035, dated the 10th December, 1951 shall be amended as under, namely:—

(1) The words "and Gur" and "or gur" wherever occuring in the said notification shall be deleted.

(2) Sub-clause (b) of clause 2 of the said notification shall be deleted and sub-clauses (c), (d) and (e) thereof shall be renumbered as (b), (c) and (d) respectively.

[No. SV-101(11-1)/51-52.]

P. A. GOPALAKRISHNAN, Joint Secy.

PRINTED IN INDIA BY THE MANAGER, GOVT. OF INDIA PRESS, NEW DELHI
AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1954

REGISTERED No. D.

The Gazette of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 8] NEW DELHI, FRIDAY, JANUARY 8, 1954

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 30th December 1953

S.R.O. 161.—Whereas the election of Shri Hukam Singh as a member of the Legislative Assembly of the State of Uttar Pradesh, from the Kaisarganj (South) constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Braj Naresh Singh, B.A., LL.B., Vakil, son of Bhaya Jagdeo Singh, Mohalla Akbarpura, Bahraich;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL AT ALLAHABAD

PRESENT:

Sri V. G. Oak, I.C.S., *Chairman.*

Sri N. N. Mukerji,

Sri Baburam Avasthi, *Members.*

ELECTION PETITION No. 6 OF 1953

Sri Braj Naresh Singh, *Petitioner.*

Versus

Sri Hukam Singh, *Respondent.*

ORDER

This is an election petition by Sri Braj Naresh Singh challenging the election of Sri Hukam Singh to the U.P. Legislative Assembly from Kaisarganj (South) Constituency, in the district of Bahraich, at the bye-election held on 15th of March, 1953. The petitioner's case is that he and the respondent were the only candidates at the bye-election, and the respondent was declared elected by the Returning Officer on the 18th of March, 1953. The result of the election was published in the U.P. State Gazette (Extra-ordinary) on the 24th of March, 1953. The petitioner questions the election of the respondent on the following grounds. The respondent was disqualified under Article 191 of the Constitution for being chosen as a member of the Legislative Assembly, on account of his holding an office of profit as a Minister in the State Government, even after his election to the Legislative Assembly at the General election in January 1952 had been declared void by the Election Tribunal, Lucknow, by an order dated the 18th of December, 1952, published in the *Gazette of India*

(*Extra-ordinary*) on the 20th of December, 1952. The respondent continued to function as a Minister even after the said declaration of his election being void, although under Article 164(4) of the Constitution he could not, the petitioner contends, continue as a Minister for more than six months with effect from the 20th of May, 1952 (the date of the respondent's original appointment as a Minister) without being a member of the Legislative Assembly, and his continuance as a Minister after the 20th of December, 1952 was *ultra vires* and operated as a disqualification to be a member of the Legislative Assembly; this objection was raised by the petitioner before the Returning Officer on the 10th February, 1953, but was over-ruled by him and the respondent's nomination was accepted by the Returning Officer. This action of the Returning Officer was illegal and has materially affected the result of the bye-election as otherwise the petitioner would have been declared elected being the only other candidate nominated.

The petitioner further contends that the respondent in furtherance of his election took the assistance of a number of Government servants including the District Magistrate of Bahraich, many village headmen, Adalati Panches and village Pradhans: he also appointed a number of such government servants, village headmen, Adalati Panches and village Pradhans as his polling Agents whose names were given in list 'A' attached to the petition. The next contention of the petitioner is that the Return of Election Expenses lodged by the respondent is false in as much as the expenses incurred by the Congress organisation on his behalf have been wholly omitted, and the equivalent of the service rendered to the respondent by the jeep and truck provided to him by the proprietors of Jarwal Road Sugar Mills, has been omitted and the respondents expenses actually incurred exceeded the maximum limit of Rs. 8,000. The petitioner further contends that the respondent and his agent carried on propaganda against the personal character and conduct of the petitioner. One Bhagwan Bux Misra brought forward a handbill calumnising the petitioner. The details of this pamphlet are given in list 'B' attached to the petition. The further contention of the petitioner in the petition is that the respondent and his agents brought out handbills and posters without the names of printer and publisher, in furtherance of the respondent's election. The details were given in list 'C'. The petitioner, therefore, prayed that the election of the respondent be declared void and the petitioner be declared elected a member of the U.P. Legislative Assembly from the Kaisarganj (South) Constituency in the district of Bahraich.

The respondent in his written statement admitted many of the facts alleged in the petition but did not admit the facts given in paragraph (6) of the petition which were made the basis of the petitioner's claim. In the Additional pleas the respondent asserts that he was never disqualified under Article 191 of the Constitution, that the finding of the Election Tribunal, Lucknow declaring the election of the respondent at the General Election in January, 1952, was published in the U.P. State Gazette (Extraordinary) on the 20th December 1952 and it was only after the publication that the order of the Election Tribunal became operative; that the said order of the Election Tribunal could not have retrospective effect in as much as the entire scheme of the Representation of People Act, 1951 indicated otherwise; that it was only for a period of nearly three months from the 20th of December, 1952 to the 24th of March, 1953, that the respondent was not a member of the Legislative Assembly and the six months period under Article 164(4) of the Constitution should be calculated from the 20th December, 1952 and not from the 20th of May, 1952, when he was appointed Minister. Hence, the stage never reached when the respondent remained a Minister for more than six months and so he was not disqualified on the dates of his nomination and the election now in question, as he was successful in the bye-election which took place on the 15th of March, 1953, was declared elected by the Returning Officer on the 18th of March, 1953, and the declaration of his election was published in the U. P. State Gazette, dated the 24th of March, 1953. Hence, the respondent contends, at no stage could it be said that he had illegally held the office of a Minister and the Returning Officer's order, dated 10th February 1953 accepting his nomination was valid and not open to question. The respondent denied that he took any help from any government servants or headmen, Pradhans etc.

On these pleadings the following issues were framed:

ISSUES

1. Whether the respondent was disqualified for election for reasons given in clause (a) of paragraph (6) of the petition?

Was respondent's nomination paper improperly accepted?

2. Did the District Magistrate of Bahraich attend the election meeting mentioned in clause (c) of paragraph (6) of the petition? If so, its effect?

Is this charge not maintainable due to the absence of a list of particulars?

3. Whether the persons mentioned in List A are Panches, Sarpanches, Mukhias or Pradhans as alleged?

Did they work as polling agents for the respondent?

Whether these persons are Government Servants for purposes of section 123(8), R.P. Act, 1951?

Did the respondent act in good faith in employing these persons?

4. Were the jeep and the truck employed for the respondent as mentioned in clause (d) of paragraph (6) of the petition?

Is this charge not maintainable due to absence of a list of particulars?

5. Did the respondent take precautions as mentioned in paragraph (24) of the written statement? If so, its result?

6. To what relief, if any, is the petitioner entitled?

None of the parties produced any oral evidence.

FINDINGS

Issue No. 1.—The facts are admitted, so far as issue No. 1 is concerned. The respondent was declared to have been elected from the Constituency in question as a result of the General Election held in January, 1952. The respondent assumed charge as a Minister in the U.P. Government on 20th May 1952. Sri Brij Naresh Singh filed an election petition challenging the election of Sri Hukam Singh as a result of the General Election. His election petition was allowed by the Election Tribunal, Lucknow, on 18th December, 1952. That decision was published in the Gazette of India and in the U.P. Gazette on 20th December 1952. Although the Election Tribunal, Lucknow, declared the election held on 22nd January 1952 void, the respondent continued as a Minister after 20th December 1952 at least up to August, 1953.

The first point for consideration is whether as a result of the decision of the Election Tribunal, Lucknow, the respondent's election in 1952 was void *ab initio* as alleged by the petitioner, or only with effect from the 20th of December, 1952, as pressed on behalf of the respondent. Section 107, R.P. Act, 1951 states: "An order of the Tribunal under section 98 or section 99 shall not take effect until it is published in the Gazette of India under section 106". In the present case the judgment of the Election Tribunal, Lucknow, was pronounced on 18th December 1952. The decision was published in the Gazette of India, dated 20th December 1952. So, under section 107, R.P. Act, 1951, the order of the Election Tribunal, Lucknow, could not take effect until 20th December 1952. The question, however, remains whether the publication made on 20th December 1952 had retrospective effect.

Sri Shiva Prasad Sinha appearing for the respondent referred to "Keshavan *v.* State of Bombay" (A.I.R. 1951 S.C. 128). In that case their Lordships of the Supreme Court held that, every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have retrospective operation. The question for consideration in Keshavan's case was whether Article 13 of the Constitution had retrospective operation. The point under consideration in the present case is slightly different. The question is whether the order of the Election Tribunal pronounced on 18th December 1952 and published in the Gazette on 20th December 1952 had retrospective operation.

When a civil court grants a declaration that a certain transaction is void, the declaration generally means that the transaction is bad in law for all purposes. When a court passes a decree declaring that a marriage is a nullity, there is a declaration that the marriage was void *ab initio*. Children born from such a union are illegitimate. It is, however, open to the Legislature to provide that a certain transaction or proceeding shall be partly valid and partly invalid.

Clause (b) of Article 329 of the Constitution lays down that, "No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition.....". It is true that the marginal note to Article 329 is "Bar to interference by courts in electoral matters." It may be that the main idea underlying article 329 was to oust jurisdiction of civil courts to interfere in electoral matters. But Article 329(b) lays down in clear terms that, an election shall not be called in question except by an election petition. To the same effect is section 80, R.P. Act, 1951: "No election shall be called in question except by an election petition...." Article 329 of the Constitution and section 80, R.P. Act, 1951, require that, an election has to be treated as a valid proceeding, unless such election is declared void by an

Election Tribunal. In other words, an election to the Legislature of a State is only voidable, and not altogether void.

Sri Harish Chandra Sharma appearing for the petitioner drew our attention to Article 189 of the Constitution. Article 189(2) lays down that, "any proceedings in the Legislature of a State shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings." Article 189(2) thus declares that even if the election of a person is set aside by an Election Tribunal, the part taken by such person in the Legislature has to be treated as valid. Sri Sharma argued that this Article supports his contention that the election is otherwise void, as R.P. Act, 1951 does not contain any provision corresponding to Article 189(2) of the Constitution.

Section 98, R.P. Act, 1951 provides for four different forms for the decision of an Election Tribunal. Clause (d) of section 98 provides for an order declaring the election to be wholly void. Similarly, section 100(1), R.P. Act, 1951, lays down that, under certain circumstances, the Tribunal shall declare the election to be wholly void. The declaration made by the Election Tribunal, Lucknow, on 18th December 1952 was that, the election held on 22nd January 1952 was wholly void.

What is the effect of this order of 18th December 1952 is the chief point of dispute between the parties. It is contended for the petitioner that the use of the word "void" in the said order itself and in sections 98 and 100(1) of the R.P. Act, 1951, makes it clear that the original election of the respondent was altogether void *i.e.*, void *ab initio*. In other words the order had a retrospective effect. It is on the other hand contended for the respondent that the said order had no such effect, and that it took effect from the date of its publication, the 20th of December, 1952.

Sri Harish Chandra Sharma appearing for the petitioner argues that sections 98 and 100 use the word "void" and "wholly void" and the order of the Lucknow Tribunal, dated 18th December 1952 declared first election of the respondent to be "void", hence it must be taken that there was no election at all in the eye of law and so no declaration of the respondent's election. The six months' period under Article 164(4) he contends, must run from 20th May 1952 when the respondent was appointed Minister by the Governor and it lasted till 20th November 1952 and the period after this last date is not covered by Article 164(4). As a consequence the respondent was not a Minister on the dates of nomination for the bye election, and the poll and the declaration of the result thereof. His argument at the first sight seemed plausible. The reply of Sri Shiva Prasad Sinha appearing for the respondent was that (1) the word "void" is sometimes used in legislative enactments for the word "voidable", as held by courts, and (2) if the word "void" is taken in its strict literal sense, then it leads to absurdity, as on that view the respondent ceased to be a Minister from 21st November 1952 without any one being aware of it, for the declaration of the Lucknow Tribunal came about a month later on 18th December 1952. Hence, if two constructions of a word are possible, then that construction should be rejected which leads to an absurdity and therefore, the word "void" in sections 98 and 100(1) and the Lucknow Tribunal's order, dated 18th December 1952 should be interpreted in the sense of "voidable". We do not want to question the soundness of this rule of interpretation.

We are, however, of opinion that the respondent's contention taken as a whole is not correct, and it does not meet the difficulty appearing from the use of the word "void" in section 98 and 100, and we think that the word "void" has been used, as we shall presently show, correctly and intentionally in its literal sense of nullity and not in the sense of "voidable".

Apart from the above reason, Sri Shiva Prasad Sinha could not give any reason why the election of the respondent at the General Election of January, 1952 should be deemed voidable and not void. But we have come to the conclusion that there is an undoubtable and unquestionable reason for holding that the said election was only voidable and not void *ab initio* though it was declared "wholly void" under section 100(1), R.P. Act, 1951, by the Lucknow Tribunal.

It appears to us that the whole thing turns upon the decision whether an election which can be set aside and which has been actually set aside under section 100(1) R.P. Act, 1951, was void or only voidable. In the former case, it will take effect from the very beginning, for, a transaction which is void in law is not deemed to have existed at all. If on the other hand, such an election as can be set aside is only voidable at the option of the defeated party, then it remained valid till it was avoided, for it was open to the defeated party not to challenge it at all, in which case it would have remained valid and would not have any effect on the successful party. Hence we have to consider this point rather in detail.

"The distinction between 'void' and 'voidable' transactions is a fundamental one, though it is often", [says Pollock in his book on the 'Principles of Contract', 10th (1936) Edition], "obscure by carelessness of language. An agreement or other act which is void, has from the beginning no legal effect at all, save in so far as any party to it incur penal consequences, as may happen where a special prohibitive law, both makes the act void and imposes a penalty. Otherwise no person's rights whether he be a party or a stranger, are effected. A voidable act, on the contrary, takes its full and proper legal effect unless and until it is disputed and set aside by some person entitled so to do". In Mosley and Whiteley's Law Dictionary, the distinction between 'void' and 'voidable' is given thus: "A transaction is said to be void when it is a mere nullity and incapable of confirmation; whereas a voidable transaction is one which may be either avoided or confirmed by matter arising *ex-post facto*". And the author relies for this statement on Stephens' "Commentaries". The Indian Contract Act, 1872 defines these words thus: "Section 2(g)—An agreement not enforceable by law is said to be void, (i) an agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.

It is true that in the present case no contract is in dispute, but the same distinction between a void transaction and a voidable one runs in every branch of law.

As already observed, Article 329(2) of the Constitution and Section 80 of the R.P. Act, 1951 lay down that no election to either House of Parliament or to the House or either Houses of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for, by or under any law made by the appropriate Legislature; and the law contemplated here has been made by the Central Legislature as the Representation of People Act, 1951. This mandate of the Constitution clearly shows that an election which can be avoided under the R.P. Act, 1951 is only voidable and not absolutely void, but the use of the word "void" in sections 98 and 100(1) of R.P. Act 1951 causes some difficulty, and we have to see whether this use of the word "void" and "wholly void" in Section 100 R.P. Act, 1951 militates against such an election being voidable only. Section 98 says: "at the conclusion of the trial of an election petition the Tribunal shall make an order.... (b) declaring the election of the returned candidate to be void; or.....(d) declaring the election to be wholly void." Similarly Section 100 lays down in sub-section (1): "if the Tribunal is of opinion.....(c) that the result of the election has been materially effected by the improper acceptance or rejection of any nomination, the Tribunal shall declare the election to be *wholly void*". (We may observe here that this was, what was declared by the Lucknow Tribunal on 18th December 1952).

Section 100 Sub-section (2) speaks: "..... if the Tribunal is of opinion..... the Tribunal shall declare the election of the returned candidate to be void, (3) if in the opinion of the Tribunal . ..... the Tribunal may decide that the election of the returned candidate is not void."

Thus we see that the word "void" occurs where an election is declared void. That is, the Act in these sections speaks of the Tribunal's ultimate order and so the word "voidable" could not be used in these sections. A transaction which is voidable is valid till it is avoided in due process of law and when the party entitled sets the law in motion for the purpose of avoiding a voidable transaction and when the court upholds his contention, it uses the word "void" in its order or decree and not "voidable". A court cannot say "I declare the contract or transaction to be voidable", for on the date of the declaration by the court it was no longer voidable having already been avoided by the party entitled. In a suit for declaration regarding a voidable contract or transaction or alienation the plaintiff always prays "Please declare it to be void". [See the Specific Reliefs Act Section 42, illustration (c), which contemplates a declaration in a reversioner's suit to set aside an alienation made by a widow without legal necessity which is only voidable). See 'Obala Kondama Naicker Ayyan *versus* Kandasamy Goundar:' (1923) 51 Indian Appeals 145 (at pp. 151—3) 47 Mad. 181 22 Allahabad Law Journal 16.

In Mogha's Pleadings, 1951 edition, pp. 385-6, Forms of Plaints Nos. 30, 31 and 32, are the plaints for avoiding voidable transactions, *i.e.* contracts and alienations on account of coercion, fraud, undue influence etc., which are only voidable under the Contract Act, Sections 19 and 19-A. In every one of them the relief sought is to declare the transaction to be void (not voidable).

In a case where the relief claimed is only a declaration (as in election petitions) the operative part of the judgment cannot possibly use the word "voidable" and must use the word "void"; though the court may say in the body of its judgment that the transaction impeached was voidable.

Moreover, there is the high authority of the Judicial Committee of the Privy Council for saying that a voidable contract when avoided "becomes void" and then must be treated as void, (*vide* Satgur Prasad *versus* Har Narain, I.L.R. 7 Lucknow 64—1932 Allahabad Law Journal 297—A.I.R. 1932 P.C. 89).

Here the transaction in dispute was only voidable and so was sought to be avoided by a suit by the person entitled, and the Privy Council held that when the court finds a transaction to be voidable then it "becomes void", within the meaning of Section 65 of the Contract Act and they applied the provisions of the said section to the case. In plain language this ruling lays down that after the party entitled to avoid a voidable transaction moves to set it aside, the transaction is no longer voidable but becomes void.

In the light of these considerations we may proceed to interpret section 107 R.P. Act 1951. This section lays down that, an order of the Tribunal shall not take effect until it is published in the Gazette of India under section 106. It is a little difficult to understand the idea underlying section 107. Under the Government of India (Provincial Elections) Corrupt Practices and Election Petitions Order, 1936, Commissioners were appointed for making inquiries into election petitions. Election Commissioners submitted a report to the Governor. The Governor had to issue orders in accordance with the report of Election Commissioners. In England Election Judges are required to submit their report to the Speaker of the House of Commons. Under Section 103 R.P. Act 1951, the Tribunal after announcing orders under sections 98 and 99 has to send a copy thereof to the Election Commission. Under Section 106, the Election Commission causes the order to be published in the Gazette of India and the Official Gazette of the State concerned. Section 107 lays down that the orders take effect only on such publication. Thus, the provisions of sections 103, 106 and 107 R.P. Act, 1951 are on the lines of the previous election law in India and the present election law in England.

Under section 107 an order of the Tribunal shall not take effect until it is published in the Gazette of India. Section 107 is capable of two interpretations. According to the first interpretation section 107 merely postpones the operation of the order of the Tribunal by a short interval (between the date of delivery of the order and the date of publication in the Gazette). In the present case the order of the Election Tribunal, Lucknow, was delivered on 18th December 1952. The order was published in the Gazette of India on 20th December 1952. Thus, according to the first interpretation the only effect of section 107 was that instead of 18th December 1952 the order took effect on 20th December 1952. There was little point in making a provision, which merely causes a delay of two days in the operation of the order. According to the second interpretation of Section 107 the publication in the Gazette of India has no retrospective effect. The words, "an order of the Tribunal shall not take effect until" are equivalent to the expression "an order of the Tribunal shall have no effect until". Bearing in mind the basic principle that an election is only voidable and not void, the second interpretation of Section 107 R.P. Act, 1951 appears more plausible.

So, in our opinion the order, dated 18th December 1952 had no legal effect until 20th December 1952. The election held on 22nd January 1952 was valid upto 19th December 1952. The election was invalid with effect from 20th December 1952.

Sri Sharma relied upon Articles 164 and 191 of the Constitution in support of his contention that, the respondent was disqualified for membership of U.P. Legislative Assembly. Article 164(4) of the Constitution states: "A Minister who, for any period of six consecutive months, is not a member of the Legislature of the State shall, at the expiration of that period, cease to be a Minister." It was urged for the petitioner that, 'the election held on 22nd January 1952 was wholly void. The respondent worked as a Minister from 20th May 1952 till 18th March 1953 although he was not a member of the Legislature during this period. This period exceeded six months. Thus the respondent violated Article 164(4) of the Constitution.' But we have held that the respondent's election as a member of the U.P. Legislative Assembly during the General Election was valid upto 19th December 1952. That election became invalid with effect from 20th December 1952 only. On 18th March 1953 the respondent was declared elected in the bye election. Thus it was only for a period of about three months that the respondent worked as a Minister, although he was not a member of the Legislature. It has not been shown that, the respondent worked as a Minister for the period of six consecutive months, although he was not a member of the Legislature. There was, therefore, no violation of Article 164(4) of the Constitution.

Lastly, we have to consider Article 191 of the Constitution. Article 191 states: "(1) A person shall be disqualified for being chosen as, and for being, a member

of the Legislative Assembly or Legislative Council of State ..... (a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule..... (2) For the purposes of this Article, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State."

It will be noticed that sub-clause (a) of clause (1) of Article 191 lays down a rule that a holder of an office of profit shall be disqualified for membership while clause (2) of Article 191 lays down an exception to that rule. We have to consider whether the respondents case falls under the general rule or under the exception. It was conceded by the respondent's counsel in August 1953, that the respondent worked as a Minister throughout the period from May, 1953 to August 1953. It was also conceded that he was drawing the salary attached to this office. The respondent worked as a Minister, and drew his salary both on the date of the nomination and the date of polling.

The Uttar Pradesh is one of the States specified in the First Schedule of the Constitution. At the material time the respondent held the post of a Minister in Uttar Pradesh. Under clause (2) of Article 191, the respondent shall not be deemed to hold an office of profit under the Government of India or the Government of U.P. by reason only that he was a Minister in U.P. Government. So, the respondent was not hit by the prohibition contained in sub-clause (a) of clause (1) of Article 191 of the Constitution. The respondent was not disqualified for membership of U.P. Legislative Assembly.

We, therefore, hold that the respondent was not disqualified for election and that his nomination paper was properly accepted by the Returning Officer.

Issue No. 2.—The petitioner did not press this issue. So the first part of issue No. 2 is decided against the petitioner. Part 2 of this issue does not arise. It is not necessary to discuss part 3 of this issue.

Issue No. 3.—The petitioner did not press this issue. So parts 1, 2 and 3 of issue No. 3 are decided against the petitioner. It is not now necessary to discuss part 4 of issue No. 3.

Issue No. 4.—This issue was not pressed by the petitioner. Part 1 of issue No. 4 is decided against the petitioner. It is unnecessary to discuss part 2 of the issue No. 4.

Issue No. 5.—The respondent did not adduce any evidence on this issue. Part 1 of issue No. 5 is decided against the respondent. Part 2 of the issue does not arise.

Issue No. 6.—The petitioner pressed issue No. 1 only. On that issue he has failed. So the election petition must be dismissed. The petitioner should be ordered to pay the respondent's costs, which we assess at Rs. 250.

ORDER

The election petition is dismissed. We declare that no corrupt or illegal practice has been proved against the respondent. The petitioner shall pay the respondent Rs. 250 as costs. The petitioner shall be entitled to obtain a refund of the balance of Rs. 750 from his security deposit of Rs. 1,000.

(Sd.) V. G. OAK, I.C.S., *Chairman.*

(Sd.) N. N. MUKERJI, *Member.*

The 17th December, 1953. (Sd.) BABU RAM AVASTHI, *Member.*

*In this Election Petition Sri Harish Chandra Sharma Advocate represented the petitioner while the respondent was represented by Sarvasri R. N. Basu, Balram Lal Srivastava, S. P. Sinha, S N. Sinha, R. N. Shukla, M. P. Shukla and others.

(Sd.) V. G. OAK, I.C.S., *Chairman.*

[No. 82/6/53/9447.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.

PRINTED IN INDIA BY THE MANAGER, GOVT. OF INDIA PRESS, NEW DELHI AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1954

REGISTERED No. D 221

The Gazette of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 9] NEW DELHI, FRIDAY, JANUARY 8, 1954

MINISTRY OF FINANCE

NOTIFICATION

COMPANY LAW

New Delhi the 8th January 1954

S.R.O 162—In exercise of the powers conferred by sub-section (2) of section 248 of the Indian Companies Act, 1913 (VII of 1913), the Central Government hereby appoints the Excise Commissioner for the State of Mysore as the Registrar of Joint Stock Companies for the said State and also directs that for the purposes of sub-section (1) of the said section the office of the Excise Commissioner of Mysore at Bangalore shall be the office for purposes of registration of companies under the said Act for the whole of the State of Mysore

[No. 23(88)-CL/53]

B K KAUL, Dy Secy

PRINTED IN INDIA BY THE MANAGER, GOVT. OF INDIA PRESS, NEW DELHI
AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1954

REGISTERED No. D. 221

The Gazette of India

EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 10] NEW DELHI, MONDAY, JANUARY 11, 1954

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 31st December 1953

S.R.O. 163.—Whereas the elections of Shri Jamuna Prasad Mukhraiya and Shri Chaturbhuj Jatav, as members of the Legislative Assembly of the State of Madhya Bharat, from the Bhilsa constituency of that Assembly, have been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Lachhi Ram, S/o Shri Ratanmal Jain, Bhilsa, Madhya Bharat;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, GWALIOR MADHYA BHARAT

ELECTION PETITION No. 263 OF 1952.

Election Petition under section 81 of the Representation of the People Act, No. XLIII of 1951

CORAM:—

Shri V. K. Dongre, M.A., LL.B.,—*Chairman.*

Shri Suraj Bhan, B.A., LL.B.,—*Member.*

Shri Bhagwan Swaroop, Advocate,—*Member.*

Lachhi Ram, s/o Ratanmal Jain of Bhilsa, Madhya Bharat—*Petitioner.*

Versus

1. Jamunaprasad Mukharaiya, Neemtal Road, Bhilsa.
2. Chaturbhuj Jatav, Kampoo Road, Lashkar, Gwalior.
3. Keshav Shastri, Andar Qila, Bhilsa.
4. Vinayak Narayan Sheode, Andar Qila, Bhilsa.
5. Hira Khusla Chamar, Village Manora, Tehsil and District Bhilsa.
6. Ram Sahai, Ram Kuti, Bhilsa.
7. Sunnu Lal, Subat Road, Bhilsa—*Respondents.*

COUNSELS FOR THE PETITIONER:—

Messrs. Shiv Dayal, Jagannath Prasad Shrivastav, Krishnanand Narayanrao Parnerkar, Fateh Narayan, Advocates.

COUNSELS FOR THE RESPONDENT No. 1:—

Messrs. P. L. Inamdar, A. B. Mishra, Premnarayan, Bhajanlal Niranjan Varma, Advocates.

COUNSEL FOR THE RESPONDENT No. 2:—

Shri A. B. Mishra, Advocate.

COUNSEL FOR THE RESPONDENT NOS. 3 AND 4:—

Shri Gopikrishna Katare, Advocate.

COUNSELS FOR THE RESPONDENT No. 7:—

Messrs. Krishna Bahadur and Vidyasagar.

JUDGMENT

This is an election petition under section 81 of the Representation of the People Act, filed by Shri Lachhiram, an elector in the Bhilsa Constituency relating to the Legislative Assembly of the State of Madhya Bharat, challenging the election of Shri Jamuna Prasad Mukharaiya, respondent No. 1 and Shri Chaturbhuj Jatav, respondent No. 2 and praying that Shri Ram Sahai, respondent No. 6 and Shri Sunnulal, respondent No. 7 be declared to have been duly elected. Respondent Nos. 1 and 2 the successful candidates contested the election on behalf of the Hindu Maha Sabha, Keshav Shastri respondent No. 3 was set up by Ram Rajya Parishad; respondent Nos. 4 and 5 Shri V. N. Sheode and Shri Hira Khusla Chamar were nominated by the Communist party of India and Shri Ram Sahai and Shri Sunnulal respondent Nos. 6 and 7 were Congress candidates. The facts leading to the filing of the election petition, as stated in it, briefly stated, are as follows:

(1) Respondent Nos. 1 and 2 in their election campaign made promises that they would make 'Bharat a Truly Democratic Hindu State', oppose Hindu Code Bill, prevent Cow slaughter and protect religious traditions.

(2) In order to assure the electorate that Shri Keshav Shastri respondent No. 3 and Shri Krishna Gopal a candidate of Ram Rajya Parishad in the Basoda constituency, were not genuine candidates, but were contesting the election for the benefit of the Congress, respondent Nos. 1 and 2, their agents and other persons with their connivance, published leaflets containing false statements of facts relating to the personal character and conduct of respondent Nos. 3, 6 and 7 and calculated to prejudice their election. Those leaflets are:—

(i) Krishna Gopal Ka Bhandaphod—(Marked A).

(ii) Dr. Jamuna Prasad Mukharaiya—(Marked B)

(iii) Hindu Sabha Nateran Ka Virat Ayojan—(Marked C)

(iv) Ram Rajya Parishad Banam Congress—(Marked D).

(v) Congress Dalalose Savdhan—(Marked E).

(vi) Congress Se Savdhan—(Marked M).

Besides this, Seth Ghasiram, President, Hindu Maha Sabha Bhilsa, agent of respondent Nos. 1 and 2, just a few days before the Polling of Pipaldhar Station, stated before the public that the Congress had given five thousand rupees to Ram Rajya Parishad candidate, in order to divide Hindu Sabha votes.

(3) Respondent Nos. 1 and 2, their agents and other persons with their connivance published two leaflets and a booklet containing false statements, calculated to prejudice the election of respondent Nos. 6 and 7. They are:—

(i) Janab Ke Hath Kande Aur Karname—(Marked F).

(ii) Harijan Bhaiyo Savdhan—(Marked H).

(iii) Khadi Ke Chole Me Madhya Bharat Ke Ek Pramukh Congressi Neta Ke Kale Karname—(Marked G).

(4) Respondent Nos. 1 and 2, their agents and other persons with their connivance obtained and secured the assistance of a number of Government servants for the furtherance of their election prospects through the publication of four leaflets and one circular letter (Marked I, J, C, K, R) signed over by Patels.

(5) Respondent Nos. 1 and 2, their agents and other persons with their connivance, issued five hand bills, marked I, J, C, K and L and a circular letter marked R and leaflets 'Harijan Bhaiyo Savdhan' (Marked H), 'Yadi Ap Chahte Hain' (Marked O), over the signature of persons, who did not subscribe their signatures. A leaflet 'Hindu Rashtra Ki Sthapna Ke Hetu' (Marked S) was published in the name of Sardar Sambhaji Rao Angre, who is dead. Through this fraudulent means, undue influence has been brought on the electors.

(6) Respondent Nos. 1 and 2, and other persons with their connivance, published and distributed a hand bill (Marked T) to exert undue influence on the electorate.

(7) Respondent Nos. 1 and 2, their agents and other persons with their connivance, made a systematic appeal to the electors on grounds of Hindu religion, caste and community, as well as on the ground of protection to cow, as a symbol

of Hindu religion. This appeal has been made through the leaflets and posters which are:—

(i) Congress Se Savdhan—(Marked M).
(ii) Janab Ke Hath Kande Aur Karname—(Marked F).
(iii) Congress Dalalo Se Savdhan—(Marked E and E1).
(iv) Hindu Sabha Nateran Ka Virat Ayojan—(Marked C).
(v) Harijan Bhaiyo Savdhan—(Marked H).
(vi) Harijan Ummedwar Chaturbhuj—(Marked N).
(vii) Yadi Ap Chahte Hai—(Marked O).
(viii) Hindu Maha Sabha Ka Virat Ayojan Gram Wardha—(Marked K).
(ix) Hindu Rashtra Ki Sthapna Ke Hetu—(Marked S).
(x) Doctor Mukharaiya Ki Ghud Sawar Peti Me Vote Daliye—(Marked B).
(xi) Hindu Maha Sabha Ko Vote Deejiye—(Marked Q).

(8) Respondent Nos. 1 and 2 and their agents and other persons with their connivance issued two posters marked B and P, a booklet G and a hand bill T which did not bear the names and addresses of the printer and publisher thereof.

(9) The Returns of elections expenses submitted by respondent Nos. 1 and 2 are false in material particular.

(10) The Returning Officer, added to the votes of respondent No. 1, the votes of Ram Rajya Parishad of Norja Polling Station, which had already been counted for respondent No. 3.

(11) The provisions of the Representation of the People Act and Rules made thereunder, were not complied with.

The petition was published in the Madhya Bharat Government Gazette, dated the 21st August, 1952 under section 90 of the Representation of the People Act. Respondent No. 1 Dr. Jamuna Prasad Mukharaiya gave notice to the Tribunal of his intention to lead evidence to prove that the election of Shri Ram Sahai and Sunnulal would have been void, if they had been returned candidates, by presenting a petition, before a member of the Tribunal at Gwalior on 4th September, 1952, which was forwarded to the Chairman by registered post to Dhar, and the Chairman received it on 11th September, 1952. The petitioner made an objection that the recriminatory notice has not been presented to the proper authority and within the time prescribed under the Representation of the People Act.

Respondent Nos. 1, 2, 6 and 7 filed written statements. Respondent No. 5 did not appear and Mr. Katare Advocate for respondents Nos. 3 and 4 gave an application that his clients did not want to submit any written statements.

Respondent Nos. 6 and 7 have admitted all facts stated by the petitioner.

Respondent Nos. 1 and 2 have made common preliminary objections that the petitioner has failed to comply with the provisions of section 83 of the Representation of the People Act; the lists accompanying the petition and the particulars are not verified as required by law; the petitioner has not joined as respondents Shri Ghasiram s/o Agyaram and Shrimati Panchobai *alias* Kosalyadevi wife of Sunnulal, who were duly nominated candidates; and the provisions of section 123, sub-clause (2), proviso (a)(i); and section 124 sub-clause 5 of the Representation of the People Act of 1951 are repugnant to the fundamental rights granted under the Constitution of India and as such are *ultra vires*. These respondents have admitted the introductory matters given in para. Nos. 1 to 4 of the petition and have denied the matters contained in para. Nos. 5, 7, 8, 9, 10, 11 and 12 of the petition.

Both these respondents have admitted that pamphlet marked B (Ex. 24) was published by the party to which these respondents belong. Respondent No. 1 has admitted leaflets marked K (Ex. 47), R (Ex. 39), S (Ex. 34) and Q (Ex. 33); and respondent No. 2 has admitted leaflets marked N (Ex. 31), O (Ex. 32) and P (Ex. 36). Both respondents have denied most of the allegations made in the petition by saying that they are not responsible for publishing the leaflets and pamphlets not admitted by them; and regarding the admitted pamphlets they have said that they do not infringe the election law.

The following issues were framed:

(1) What is the effect of the list of particulars accompanying the petition being not verified on oath as required by law?

(2) Has the petitioner failed to join Shri Ghasiram Maheshwari and Mrs. Panchobai *alias* Kaushalya Devi w/o Sunnulal, and are they necessary parties *vide* section 82 of the Representation of the People Act, 1951 and is the petition liable to be set aside with costs on this ground?

(3) Are the provisions contained in section 123 clause (2) proviso (a-i), and section 124 sub-clause (5) of the Representation of People Act, 1951 void and *ultra vires* of the Constitution of India. Is this Election Tribunal competent to deal with this objection?

(4) Whether the leaflets A, B, C, D, E, M, F, G, H and Q mentioned in para. 8(i), (ii), (iii) of the petition were printed, read out, explained and distributed by respondent Nos. 1 and 2 or their agents or with their connivance, believing them to be false or believing them not to be true; and do they refer to respondent Nos. 3, 6 and 7, and if so, what is its effect on the election?

(5) Whether respondent Nos. 1 and 2 or their agents or other persons with their connivance secured the assistance of Government servants for the purpose of the furtherance of election, as mentioned in para 8(4) of the petition. How does this fact affect the result of election?

(6) Whether respondent Nos. 1 and 2 or their agents or other persons with their connivance issued hand bills I, J, C, K, L, R, O, S (out of which K, R, S are admitted by respondent No. 1 and O by respondent No. 2). Does leaflet 'S' bear the name of Sambhaji Rao Angre who is dead? Do the contents of the above leaflets amount to undue influence?

(7) Whether respondent Nos. 1 and 2 or their agents and other persons with their connivance brought undue influence on the electors by publishing and distributing handbill 'T' and what is its effect?

(8) Are posters and hand bills marked B, P, T, Q (in the petition, which have not got names and addresses of printers and publishers on them) issued by respondent Nos. 1 and 2 or their agents and other persons with their connivance. If so what is the effect on election?

(9) Whether there was a systematic appeal to the Hindu Electors by respondent Nos. 1 and 2 or their agents or other persons with their connivance on the grounds of Hindu religion, caste and community as well as on the protection to be given to Cows as a symbol of Hindu religion, and what is its effect?

(10) Are the allegations given in para. 8 of the petition indefinite and without particulars and if so, what is its effect?

(11) Is para. No. 9 of the petition short of particulars, about the manner and effect of the systematic appeal, on the election; and if so, what is its effect?

(12) Is the return of election expenses filed false as detailed in para. No. 9(3) of the petition; and what is its effect?

(13) Is the recriminatory notice under section 97 of the Representation of the People Act, 1951 filed within time and is it presented to the proper authority, if not what is its effect?

(14) Did the Returning Officer add to the votes of respondent No. 1 the votes of Ram Rajya Parishad of Norja Polling Station, which had already been counted for respondent No. 3; and if so, how far does it effect the election?

(15) Whether the provisions of Representation of the People Act, 1951 and rules were not complied with as described in the list No. 3 of non-compliances and what is its effect?

(16) Is the petitioner entitled to get the declaration that the election of respondent Nos. 1 and 2 is void and that respondent Nos. 6 and 7 are duly elected?

Issue Nos. 1, 10 and 11 have been decided by our order, dated the 19th December, 1952 (Annexure A) and issue No. 13 by our order, dated the 24th December, 1952 (Annexure B).

Issue No. 2.—There is no dispute regarding the fact that Shri Ghasiram and Mrs. Panchobai were duly nominated candidates; and they withdrew after their nominations were accepted. The statements of Ghasiram P.W. 4 and Sunnulal P.W. 41 are clear on the point. The objection of respondent Nos. 1 and 2, is that as these duly nominated candidates have not been joined as respondents, under section 82 of the Representation of the People Act, the petition must be dismissed. In Election Petition No. 221 of 1952, published in the *Gazette of India*, dated 5th May, 1953 on page 1153, we have held that a candidate who had withdrawn, is not a necessary party; and as such his not being joined as a respondent is not fatal to the petition. In view of this finding of ours, which has been followed by us, in other election petitions, the learned counsels for the respondents, did not

seriously press this issue. We do not find any grounds to take a different view in this case, hence we decide this issue against the respondents.

Issue No. 3.—Mr. Mishra's objection in connection with this issue is two fold. (i) That article 19(a) of the Constitution of India guarantees freedom of speech and expression; and section 123(2) (a) (i) and section 124(5) of the Representation of the People Act are in restraint of this freedom. (ii) In view of article 329(b) of the Constitution of India, the appropriate Legislature for making the law for setting aside election is the State Legislature and not the Parliament.

(i) The words of the relevant sections of the Representation of the People Act are:

Section 123(2) (a) (i)—Threatens any candidate, or any elector or any person in whom a candidate, or an elector is interested with injury of any kind including social ostracism and excommunication or expulsion from any caste or community.

Section 124(5)—The systematic appeal to vote or refrain from voting on grounds of caste, race, community or religion or the use of, or appeal to, religious and national symbols, such as, the national flag and the national emblem, for the furtherance of the prospects of a candidate's election.

From the words of the above clauses it is clear that the freedom of speech and expression is restricted only so far as it is used for threatening an injury of social ostracism and excommunication or expulsion from any caste or for making an appeal on grounds of caste, race, community or religion etc.

The amended clause 2 of article 19 of the Constitution of India says that:—Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

In our view, the restrictions on freedom of speech or expression contained in section 123(2) (a) (i) and 124(5) of the Representation of People Act are reasonable restrictions on the right, in the interest of the security of the State, public order and to check incitement to an offence; and as such these provisions of the Representation of the People Act are not *ultra vires* of the Constitution.

In connection with the second objection Mr. Mishra has drawn our attention to Article 327, 328, 329 of the Constitution of India. His line of argument is that under article 327 the Parliament can by law only make provisions with respect to all matters relating to or in connection with elections, but it cannot make provision with respect to setting aside elections, and in view of article 329 the provisions for setting aside an election to the State Legislature should be made by the appropriate Legislature i.e., the State Legislature.

The words used in Article 327 of the Constitution of India, *viz.*, matters relating to or in connection with elections are wide enough to include setting aside of elections; and as provision has been made by the Parliament in this respect in the Representation of the People Act, the State Legislature cannot make law in this respect under Article 328. In our view, the objections made and arguments advanced by Mr. Mishra in connection with this issue have no force, so we decide this issue against respondent Nos. 1 and 2.

Issue No. 4.—There are two kinds of allegations made in the petition out of which this issue arises. The first set of allegations, relates to false statements that the Congress has set up and is helping the Ram Rajya Parishad, in order to divide the votes of Hindu Maha Sabha. The second set is regarding the false statements affecting the personal character and conduct of respondent Nos. 6 and 7. The leaflets A (Ex. 23), B (Ex. 24), C (Ex. 25), D (Ex. 26), E (Ex. 27), E1 (Ex. 28), M (Ex. 30) relate to the first set; and the leaflets F (Ex. 29), H (Ex. 38) and the booklet G (Ex. 21) relate to the second.

First of all we will consider which of these leaflets are admitted or proved to have been printed published or distributed by respondents or their agents or with their connivance, and then go into their contents.

Respondent No. 1 has admitted the publication of leaflet B (Ex. 24) and poster J (Ex. 33) in para. 9(i) of his written statement; and has admitted in his statement on oath that the leaflet Ex. 9/1 (which is D, Ex. 26) was distributed in Bhilsa Constituency and it was published by Madanlal Sharma, who was his polling agent. The printing charges Rs. 18/3/- are also entered in the return of election expenses of respondent No. 1, hence respondent No. 1's explanation that this leaflet was published by Madanlal Sharma on behalf of Hindu Rashtra Sena, has no meaning.

The manuscript of leaflet M (Ex. 30) is Ex. 15, and Ex. 15/1 is a printed copy of it. Respondent No. 1 has admitted in his statement on oath that Ex. 15 was published by the Pradhan Mantri of the Hindu Maha Sabha of Madhya Bharat and it was distributed in Bhilsa also.

The printing charges of leaflets A (Ex. 23), F (Ex. 29), E (Ex. 27) and E1 (Ex. 28) are entered in the return of election expenses of Shri Niranjan Varma (R.W. 31) who was a candidate for Basoda Constituency. Regarding these four leaflets, the question now is whether they have been distributed in Bhilsa Constituency by respondent Nos. 1 and 2 or by their agents or with their connivance.

Regarding the distribution of Ex. 23, we have on record the statements of Krishna Gopal P.W. 2, Jogendrasingh P.W. 9, Ajaysingh P.W. 14, Lachhiram P.W. 34, Ram Sahai P.W. 42. Most of these witnesses have not actually seen the distribution of these leaflets, but they have procured the said leaflets from others. We do not think this evidence sufficient to prove the distribution of this leaflet in Bhilsa Constituency. Besides this, the contents of this leaflet do not amount to false statement, as they relate to a candidate of a different constituency.

Leaflet F.—Ex. 13 is the manuscript of leaflet F (Ex. 29), and Ex 15/1 is a printed copy of it. There are about a dozen witnesses on behalf of the petitioner who have deposed about this leaflet. To appreciate their evidence, we think it necessary to state briefly what these witnesses have said. Ratan C. Shah P.W. 1 is the Manager of the Nav Bharat Printing Press Bhilsa. He has deposed that Ex. 13/1 was printed in his press. The manuscript Ex. 13 was brought by Shri Niranjan Varma and Dr. Mukharaiya (Respondent No. 1) was with him. Shri Niranjan Varma made the corrections marked A, B, C in his presence. After that he took away the manuscript, which was then of three pages, with the fourth page blank. Next morning, Bhagchandra Sharma brought the manuscript with him, with contents written on the fourth page and said that it was to be printed under his signature. Then Bhagchandra put his signature on the manuscript, 1500 copies were printed. There is nothing of importance in the cross examination of this witness, on the basis of which he could be disbelieved. It is said that he is the son-in-law of a person who is inclined towards the Congress. We do not think this a sufficient ground to disbelieve his statement. Kailash Narayan P.W. 6 is the person who has done election propaganda on behalf of respondent Nos. 1 and 2. He has said that he got leaflets like Ex. 13/1 (Ex. 29). He read the contents to the people. Dr. Mukharaiya had asked him to do propaganda in that way. Jogendrasingh P.W. 9 has said that Ex. 29 was given to him by Bhagchandra Sharma. Gulabsingh P.W. 10 has said that he was working for Hindu Sabha during the election and a leaflet named Janab Ke Hath Kande (Ex. 29) was distributed in a meeting held in Nateran. Bhaiyalal was distributing this leaflet. Parasram P.W. 13 has said that Bhagchandra Sharma gave him leaflet (Ex. 29) in Gajar and Ajaysingh P.W. 14 has also said that Bhagchandra Sharma distributed this leaflet in Gajar.

Thansingh P.W. 16 has produced leaflet Ex. 29 along with 6 others of a different class and has said that they were distributed on behalf of Hindu Maha Sabha during 10—15 days before the polling. Devisingh P.W. 22 is the person who has worked for the Congress, and he has said that he had been to village Barra for canvassing, where he met Kanhaiyalal Sharma who was distributing leaflets Ex. 29 was one of them. Ghasiram P.W. 26 has said that Ex. 29 was distributed in the meeting held at Nateran.

Sundarlal P.W. 38 was the Sub-Inspector of Police of Nateran. He has said that he was present in the meeting of Hindu Maha Sabha held at Nateran on 15th December 1951. Dr. Mukharaiya, Niranjan Varma and Ramsanehi Baba addressed the meeting. In that meeting leaflet Janab Ke Hath Kande (Ex. 29) and 2-3 other leaflets were distributed.

As against this evidence of the petitioner respondent No. 1 Dr. Jamuna Prasad Mukharaiya has said that he did not get this leaflet printed, nor was it distributed by his agents or workers or with his connivance. Shri Niranjan Varma R.W. 31 has said that Bhagchandra Sharma was working in Basoda Constituency upto 1st January, and as Shri Mukharaiya was short of polling agents Bhagchandra went to Bhilsa Constituency. Bhagchandra Sharma R.W. 22 has said that he did not distribute leaflets Ex. 29, anywhere excepting Basoda. Komal Prasad R.W. 26 is the Mantri of Nagar Hindu Sabha Bhilsa. He has also said that Ex. 29 was not distributed in Bhilsa Constituency. He has further said that Ex. 13 is in Bhagchandra's hand and the portions marked E, G, were written by him (the witness) and that he had crossed the marked portion. From the statement of this witness it is quite clear that he had added to and made alterations in the original draft of Ex. 29 *i.e.*, Ex. 13. The witness has said that he had struck off his

signature on Ex. 13, as that leaflet related to Basoda Constituency. If this leaflet was really meant only for Basoda Constituency, we fail to understand, why it should include matter relating to a person (Janab No. 2) who apparently appears to be a candidate for Bhilsa Constituency. Besides this, Komal Prasad was Mantri of Nagar Hindu Sabha Bhilsa, if this leaflet had nothing to do with Bhilsa why should he have made additions and alterations in it, so far as contents regarding Janab No. 2 are concerned. This leaflet is signed by Bhagchandra Sharma, who is a Sadasya of the Karyakarini Nagar Hindu Sabha Bhilsa. Taking the statement of Komal Prasad as a whole, and his conduct in connection with Ex. 13, it is clear that this leaflet Ex. 13 (Ex. 29) was meant to serve both the Constituencies *i.e.*, Bhilsa and Basoda.

Ex. 11 appears to be a sort of a receipt of bills regarding printing charges. Ratan C. Shah P.W. 1 has said that Shri Niranjan Varma had signed it. When this bill was given to him, Shri Varma said that the amount of the pamphlet printed by Bhagchandra Sharma should have gone in Mukharaiya's bill. On this the witness said that as the manuscript was written by him, and as the matter related to the Constituencies of Bhilsa and Basoda, the amount was entered in his bill. After this for, clarification Mr. Varma wrote the words 'in interest for us'. Mr. Niranjan Varma, R.W. 31 has not denied these facts in his statement, nor has he said that what is stated as 'Bhagchandra Sharma Ki Sahi Ka Paripatra' is something different from Ex. 29, which bears the name of Bhagchandra. The writing of the phrase 'in interest for us' by Shri Niranjan Varma, in connection with 'Bhagchandra Sharma Ki Sahi Ka Paripatrak' clearly shows that these leaflets were meant for himself and some body else.

Though it is not difficult to criticise the evidence of some of the petitioner's witnesses, particularly Kailash Narayan P.W. 6, Thansingh P.W. 16, considering the whole of the oral evidence, together with Ex. 11, and reference of Janab No. 2 in the leaflet Ex. 29, we are definitely of opinion that it was printed for both Constituencies and that it was distributed by the agents and workers of respondent No. 1, with his connivance, and sometimes in his presence also, in Bhilsa Constituency.

Leaflets E and E1 (Ex. 27 and Ex. 28).—Shri Ratan C. Shah, P.W. 1 has said that Ex. 14 which is the manuscript, was given to him by Dr. Jamunaprasad Mukharaiya. The witness told him that as the appeal was made to vote for himself, it was not appropriate to have his signature on it. So Jamuna Prasad struck off his signatures and a man who had come with him signed it as Chotelal Sharma. In all 1500 copies were printed.

Ram Karan P.W. 12 has said that Mukharaiyaji gave him a leaflet having the title 'Congressi Dalalon Se Savdhan'. Keshav Shastri P.W. 15 has only seen Exs. 27 and 28, but he cannot say who was responsible for their distribution and where they were distributed. Thansingh P.W. 16 cannot say who gave him Ex. 28. Kanhaiyalal P.W. 23 has said that he was working for Mukharaiya and Chaturbhuj in the election and he distributed half a dozen leaflets and Ex. 27 was one of them. Jugal Kishore P.W. 25 has himself produced 9 leaflets, booklet etc., and has said that these were distributed by Hindu Maha Sabha people in Shamshabad. The witness has admitted that he is the son of one Kadorilal who had worked on behalf of the Congress for Ram Sahai, respondent No. 6. Bankelal P.W. 30 who has worked for the Congress in the elections has produced four leaflets, Ex. 27 being one of them, and has said that it was given to him by Kanhaiyalal Jat in Gulab Ganj Hat. We have carefully gone through the statements of the above witnesses, and we are not impressed by their evidence. Some of them have brought good many leaflets with them and some are unable to say who gave them these leaflets. We do not think the petitioner's evidence regarding the distribution of leaflets E and E/1 in Bhilsa Constituency sufficient and reliable; hence it is not proved that these leaflets were distributed in Bhilsa Constituency by respondent Nos. 1 and 2 or their agents.

Leaflet C (Ex. 25).—Ratan C. Shah, P.W. 1, has said that Ex. 16 is the manuscript of this leaflet and Ex. 16/1 is a printed copy. Ex. 16 was given to him for printing by Gulabchand of Nateran. Gulabchand, P.W. 10, has admitted signing the order form Ex. 20 and has said that Ex. 16 was written by Puransingh. The witness had been with Puransingh to the Press, seven or eight days after this, Prem Narayan took leaflets like Ex. 16 for distribution. The leaflets were distributed in Nateran. The witness is very inconsistent in his cross examination regarding the fact of distribution of leaflets. Keshav Shastri P.W. 15 has only said that Ex. 25 was seen by him and it was issued by Hindu Sabha. Kanhaiyalal P.W. 23 has said that he was working for respondent Nos. 1 and 2 during the election he distributed more than half a dozen leaflets and Ex. 25 was one of them. Ghasiram P.W. 26 has produced a copy of Ex. 25 and has said that it was distributed in Nateran. Hamirsingh P.W. 27 has said that Bhagchandra, worker of

Hindu Maha Sabha gave him Ex. 25. On going through this evidence we do not think that Jamunaprasad Mukharaiya had any hand in the printing of this leaflet or that these leaflets were distributed by him or his agents or with his connivance.

Regarding Booklet G (Ex. 21) entitled 'Khadi Ke Chole Main Madhya Bharat Ke Ek Pramukh Congressi Neta Ke Kale Karname' the allegations made by the petitioner are that it was published in Bhilsa, one day before the polling in Bhilsa took place *i.e.*, on the 8th of January, 1952, by respondent Nos. 1 and 2, their agents or with their connivance; and this booklet contained various false statements relating to the personal character and conduct of respondent No. 6. From the cover of this booklet, it appears that the booklet has been published by one Shyamlal Jain and only the cover was printed in Malti Press, Lashkar. This book contains certain allegations made through his representation to the All India Congress Committee, by one Gautam Sharma of Lashkar, Gwalior. The question before us is whether this booklet was distributed by respondent Nos. 1 and 2. We would like to mention briefly the evidence in this connection. Maya Shankar P.W. 36, Manager, Malti Press Lashkar has said that the printing of the cover and the binding of booklet Ex. 21 was done in his Press. Shyamlal Jain the publisher got this work done. This Shyamlal Jain was seen working for the Hindu Maha Sabha candidates of Lashkar. These booklets were despatched on 5th January 1952. The booklets and the bill were sent to Kunwarsingh. There is nothing in writing with the witness, which could show who really placed the order and where the books were to be despatched.

Kailash Narayan P.W. 6 has said that Dr. Jamuna Prasad Mukharaiya gave him booklet Ex. 21 for propaganda. He read the book and did propaganda. This witness has now become a Patel, he is involved in a criminal case under the Arms Act, as such he is likely to be influenced by anybody who could render him help. The witness has brought copies of Ex. 21 and Ex. 29 with him of his own accord. Considering the whole statement and the unnatural conduct of the witness, we do not think him reliable. Parasram P.W. 13 has said nothing about Ex. 21, in his examination in chief, but in cross examination by respondent No. 6 the witness has said that Dr. Jamunaprasad Mukharaiya gave him booklet Ex. 21 in Bhilsa Bajaria. This witness does not impress us.

Thansingh P.W. 16 produced a copy of Ex. 21 and six other leaflets and has said that these were distributed during the 10-15 days of the election. He has said that Dr. Mukharaiya gave him this booklet. He is not able to tell the exact date. The witness has become a contractor of Bhilsa Municipality since a year, and the petitioner is a Member and his pleader Mr. Krishna Nand is the President of the Municipality. Kanhaiyalal P.W. 23, who has done the work of distributing leaflets for respondent Nos. 1 and 2, has said that he distributed Ex. 21 with other leaflets. His version is that about 20 booklets were kept in the room along with other leaflet and he took away 8 or 10. In cross examination he has said that Mukharaiya was not there, when he took away the booklets. This clearly means that this witness did not distribute this booklet with the knowledge or connivance of respondent Nos. 1 and 2. The witness has also said that such booklets were given by Atal Beharilal for propaganda a month or a month and a half before the election and Atal Beharilal was working for Ram Rajya Parishad. Jugal Kishore P.W. 25 is the son of one Kadorilal, who has worked on behalf of the Congress for Ram Sahai respondent No. 6. He has produced Ex. 21 and other 8 leaflets and has said that this booklet was given by Bhagchandra on the day of polling in Bhilsa. This witness clearly appears to be under the influence of Shri Narayan, President, Congress Committee, Bhilsa.

Hamirsingh P.W. 27 has produced booklet Ex. 21 along with three other leaflets. He has said that Dr. Mukharaiya gave him this booklet two days before the polling. The witness has not read this booklet nor did he give it to anybody. He is not even able to say what is written on the first page. Sunderlal P.W. 38 Sub-Inspector of Police Nateran, has said that he took booklet Ex. 21 from Dr. Mukharaiya 2-3 days before 15th January 1952. The witness does not know who distributed these booklets in the public. Whatever this witness has said about Ex. 21 does not throw much light on the main point as to who distributed these booklets.

Malharrao Tapaswi P.W. 40 has said that he obtained a copy of Ex. 21 from Bhagchandra Sharma who belongs to Hindu Sabha. Bhagchandra told him that he had only one copy. Though the witness has said that these books were distributed in Bhilsa, he has not definitely said that he saw anybody distributing them. Jogendra Singh P.W. 9 has said that he got Ex. 21 two or three days before Polling took place in Bhilsa. He has not said who gave him or how he got it. Keshav Shastri P.W. 15 has said that he had seen Ex. 21 but it was not distributed

in his presence. Badri Prasad P.W. 7 and Sunnulal P.W. 41 have only said that Ex. 21 was read by Dr. Jamuna Prasad Mukharaiya at Mandsaur in June 1952, i.e., about six months after the election in dispute. This evidence is not relevant for the present inquiry as this fact cannot lead us to an inference that Shri Mukharaiya must have made use of this booklet, in his own election in January 1952.

As against the petitioner's evidence, there are some witnesses of respondent No. 1 who throw some light on the fact of distribution of Ex. 21.

Shankar Rao Bhonsale R.W. 6 has said that Shri Damodar Prasad Upamanyu, a worker of Ram Rajya Parishad had brought 500 copies of this booklet (Ex. 21) from Lashkar and he gave them to Atal Beharilal. The witness has said that he himself distributed some copies.

Damodar Prasad Upamanyu R.W. 8 who is Mantri of Ram Rajya Parishad Madhya Bharat, Gwalior has said that he went to Bhilsa on 7th January 1952 at night by Madras Mail and took with him about 500 copies of Ex. 21 along with other literature of Ram Rajya Parishad and gave the whole material to Atal Beharilal. Madanlal Sharma R.W. 11 has said that Atal Beharilal, Balram Shastri and Keshav Shastri distributed Ex. 21 in Bhilsa, and all these persons belong to Ram Rajya Parishad. Damodar Das, R.W. 12, Mathura Prasad R.W. 13 have said that Ex. 21 was distributed by Atal Beharilal on behalf of Ram Rajya Parishad. Jamuna Prasad Mukharaiya respondent No. 1 has said in his statement that Ex. 21 was not distributed nor its contents were read by him or his agents or workers.

It may be said why Atal Beharilal who is said to have distributed the booklets Ex. 21, was not produced by respondent No. 1. The reason probably is that Atal Beharilal, though belonging to Ram Rajya Parishad appears to be a relation of respondent No. 6 hence it was not safe for respondent No. 1 to produce him as his witness.

On a careful consideration of the whole evidence regarding Ex. 21, we are of view, that there is no doubt, that some copies of Ex. 21 have been distributed in Bhilsa constituency before the polling, but there is no sufficient and reliable evidence regarding the fact that the booklet was distributed or read out by respondent No. 1 or 2 or his agents or workers or with their connivance. This booklet contains an old affair, and any of the contesting parties could have made use of it. It was possible for witnesses to obtain copies from those who had them.

In the absence of sufficient and reliable evidence regarding the fact of distribution or reading of this book in the public by Respondent No. 1 or No. 2 or their agents, the responsibility of this book cannot be put on the shoulders of respondent No. 1 or 2, simply because some copies of this booklet were available in Bhilsa. In our opinion, the fact of publication or distribution of Ex. 21 by respondent Nos. 1 and 2 or their agents or with their connivance is not proved.

Leaflet H (Ex. 38).—Ratan C. Shah P.W. 1 Manager Nav Bharat Printing Press Bhilsa, has said that Ex. 4 is Dr. Jamunaprasad Mukharaiya's bill and a copy was given to him. Dr. Mukharaiya has signed it, writing that he has received the bills mentioned in it. This bill contains the amount of Rs. 14-11-6 on printing charges of Harijan Bhaiyo Savdhan. According to this witness the manuscript Ex. 5 was brought by one Shrivastav who was in the service of Hindu Sabha Bhilsa. From the statements of Kaluram P.W. 19, Devisingh P.W. 23 and Malhairao Tapasvi P.W. 40, it appears that leaflets Ex. 38 was distributed by Bhagchandra and Kanhaiyalal who were polling agents of respondent No. 1. Respondent No. 7 has said that he himself got Ex. 38 in Madhi village, though he cannot say who gave him. Respondent No. 1 Jamunaprasad Mukharaiya has not denied the signing of Ex. 4 in his statement on oath, though he has said that he did not get it printed. He has justified the contents of this leaflet and also said that when this leaflet came out, it was not decided that Shri Chaturbhuj would stand as a candidate. Considering the whole evidence, we are of view that Ex. 38 was printed with the knowledge of respondent No. 1 and it was distributed by his agents.

Out of the leaflets relating to issue No. 4 leaflets B, D, M, F, H and Q are found to be either admitted or proved. We now consider the contents of these leaflets. As the petitioner has not given any particulars of false statements in poster Q, the contents of this poster need not be considered in this connection.

In the leaflet B, the false statement complained of is that Keshav Shastri had at first promised not to stand for election but then he was standing as a candidate to get the Congress victorious. Keshav Shastri (P.W. 15) has said that this was false. Madanlal Sharma R.W. 11 and Dr. Mukharaiya R.W. 27 have said that on enquiry Keshav Shastri said that he was not standing as a candidate. As both these persons are interested witnesses, it is not safe to rely on their statements. In our view, the statement amounts to saying that Keshav Shastri was a liar and

an unreliable person standing as a candidate of Ram Rajya Parishad to help the Congress. This is a statement in relation to the personal character and conduct of Keshav Shastri, who was a candidate; and was reasonably calculated to prejudice the prospects of his election, as the voters who really wanted to vote for Ram Rajya Parishad would not then vote for him, thinking that he was there to help the Congress.

The first point in leaflet 'D' is vague and relates to the activities of a party and not of any person. The second portion is that 'Keshav Shastri when asked to stand said no' but at the last moment stood for election. The implication of this is that Keshav Shastri was a liar. This statement, in our view, is a false statement relating to the character of a candidate.

The statements mentioned in leaflet M, really relate to the acts of a party and not of any person in particular, hence these statements cannot be called false statements, as defined in section 123(5) of the Representation of the People Act.

Though the petitioner has written good many statements in leaflet 'F' as false statements, in our view, the following statements only need consideration.

'See the Karnamas (acts) of Janab No. 2'.

(a) Janab went to Bija Mandal to lead Id Namaj. He did not go to Dashera, because the minds of Hindu have been turned by Hindu Sabha.

(b) The selection of Patels had been so arranged that even Aurangzeb could be jealous, that he did not distribute so many Jagirs.

(c) If votes are given to him, he would have Hat at Kagpur.

(d) Two men from Guna and Gwalior were sent to Tarafdar Harisingh of Gyaraspur to win him from the Hindu Sabha.

(e) Ramdwara would be raised to the ground if Ramji Ram remained in Hindu Sabha.

(f) Janab was celebrating a Dharam Yagna at Gajar.

(g) The Co-operative Bank, Municipality and Jain's School are his own, the teachers of Jain High School are free to work elsewhere. The salary is paid by the Government and propaganda is done for the Congress.

(h) Driver Bhikam Singh and Servant Jagannath of the Municipality work for the Congress for 24 hours.

From the petitioner's evidence it is quite clear that the person who is called Janab No. 2 in this leaflet, was understood by everybody as Ram Sahai respondent No. 6. Even Madanlal R.W. 11 (who according to respondent No. 1, himself was his helper in his election) has said that Janab No. 2, in Ex. 29 means Ram Sahai. In our view, what is written in Ex. 29 regarding Janab No. 2 relates to respondent No. 6.

We have now to deal with the statements.

In (a) there is a distortion or exaggeration of facts. From the evidence it appears that respondent No. 6 was not going to lead Namaj, but he went on Id day to congratulate the Muslims. He also joined Dashera whenever he was in Bhilsa. The underlying idea appears to be to prejudice Hindu voters.

The main idea in (b) is that it was Janab No. 2 who got the appointments made of Patels. The respondent No. 6 has denied it, and from the petitioner's evidence it appears that respondent No. 6 had nothing to do with the appointment of Patels.

(c) From the record before us there is no ground to think that respondent No. 6 was responsible for having Hat at Kagpur.

(d) Considering the statement of Harisingh it could be said that an attempt was made by Ramdayal Raghu Vanshi of Guna to have him on the side of the Congress, so we do not think that the statement was false or was made believing it to be false.

(e) Respondent No. 6 has denied saying anything like this. Nissanshay Ram R.W. 30, has said that Ram Sahai said to him that if he did not help the Congress he would be ready to destroy his building, but the witness has clearly said in his cross-examination that Ram Sahai did not take the name of Ram Dwara. This clearly means that the matter regarding Ram Dwara was written for prejudicing the Hindu voters. This statement is false.

(f) On the basis of evidence before us it is clear that respondent No. 6 had nothing to do with Gajar Yaghya.

(g) What is intended by this statement is to impress on the public that the employees of the Co-operative Bank, Municipality and Jain School were drawing their salaries from the Government and were doing the Congress propaganda ignoring their own work. On consideration of the evidence as a whole, we find this statement false and without any justification.

(h) Bhikamsingh has been examined as a witness and he has said that he never did any canvassing for Ram Sahai or the Congress and he or Jagannath did not go with Ram Sahai.

On careful consideration of the matter in Ex. 29 regarding Janab No. 2, along with the evidence on record, we think that the statements (a), (b), (c), (e), (f). (g) referred to above, are all false statements and they were published by respondent No. 1, not believing to be true. The idea behind the publication appears to be to depict respondent No. 6 as a liar, hypocrite, unscrupulous and dishonest person, and one who could stoop to anything, and to lower him in the estimation of the people. These statements relate to the personal character and conduct of respondent No. 6 and are reasonably calculated to prejudice his prospects in the election, hence we are of opinion that the above statements come within the scope of sub-section (5) of section 123 of the Representation of the People Act.

The portions complained of in the leaflet 'H', are that (i) Sunnulal calls himself 'Tantuvay Vaishyo' hence he is not a Harijan. (ii) These people collected lot of money in Gandhiji's name, for the welfare of the Harijans, without benefit to them, and spent on cars and allowances. (iii) The Harijans are instigated to fight and afterwards no support is given, on the contrary, remuneration is demanded.

Sunnulal respondent No. 7 has denied these allegations. On considering the evidence as a whole, we do not see any justification for believing statement (i) to be true. Even assuming that Sunnulal called himself Kori or Tantuvay Vaishya, he did not cease to be a Harijan, as respondent No. 2 Chaturbhuj did not cease to be a Chamhar or Harijan, merely by calling himself a Jatav. In the Constitution (Scheduled Castes) Order 1950, the word Koli and Kori appear to be used for one and the same caste. In our view, the statement that Sunnulal was not a Harijan is false, and was made to impress upon the Harijan voters that he was really not a Harijan and as such they should vote for some one else who was a Harijan.

Statements (ii) and (iii) relate to the acts of a party and not of any particular person, hence they need not be considered.

As a result, we come to the conclusion that the respondent No. 1 by the publication of leaflets B, D, F and H which contains false statements referred to above, which he did not believe to be true, has committed major corrupt practice, specified under sub-section (5) of section 123 of the Representation of the People Act. To this extent, we decide issue No. 4 in favour of the petitioner, and we will consider the result in conection with issue No. 16.

Issue No. 5.—In para. No. 8(4) of the petition it is said that the respondent Nos. 1 and 2, their agents and other persons with their connivance obtained and secured the asistance of a number of Government servants, through the publication of four leaflets and one circular, signed over by Patels (village headmen) as per annextures I, J, C, K and R. The names of such servants and the particulars of assistance taken from them, and other details are set out in the list of particulars marked No. 1. The list No. 1 attached to the petition, is only a list containing the names of forty persons who are said to be Patels. As stated in para. 8(4) of the petition this list does not contain particulars and it is not verified as required under section 83(2) of the Representation of the People Act. On the objection of respondent Nos. 1 and 2, issue No. 1 was framed, and with respect to this list No. 1, it was decided in favour of the respondents on 19th December, 1952; and we have held in that order that list No. 1 cannot be considered for the purposes of this petition. The petitioner then gave an application for amendment of particulars which has been rejected by our order dated the 29th January, 1953 (Annexure C). According to sub-section (2) of section 83 of the Representation of the People Act, it is mandatory that the petition should be accompanied by a list signed and verified, setting forth full particulars of any corrupt or illegal practice, which the petitioner alleges. Obtaining the assistance of Government servants, for the furtherance of the prospects of any candidate's election, is a major corrupt practice, according to section 123 sub-clause 8 of the Representation of the People Act. As the petitioner has not given full particulars regarding this corrupt practice, in view of sub-clause 2 of section 83 of the Representation of the People Act, this corrupt practice cannot be enquired into, and the petitioner was not allowed to lead evidence in this respect. Mr. Shiv Dayal counsel for the petitioner has drawn our attention to some evidence on record that some persons

working for respondent Nos. 1 and 2 were Patels, and has argued that if any corrupt practice is established by evidence, we should take notice of it, even if not alleged. We find this evidence vague and insufficient. As the petitioner was not entitled to lead evidence on this point, as he had failed to give full particulars of this corrupt practice we do not think it proper to consider the meagre evidence that has somehow crept in. The petitioner not having complied with the provisions of sub-section (2) of section 83 of the Representation of the People Act in respect of the corrupt practice mentioned in para. 8(4) of the petition, we decide issue No. 5 against the petitioner.

Issue No. 6.—The leaflets K (Ex. 47), R (Ex. 39), S (Ex. 34) are admitted by respondent No. 1, and O (Ex. 32) by respondent No. 2. The contents of I (Ex. 46) and J (Ex. 55) are the same as that of R, so we do not think it necessary to see whether these leaflets also have been distributed by respondent Nos. 1 and 2 or by their agents. Regarding I, J, K and R the allegation of the petitioner is that by means of these leaflets, undue influence was brought on the electorate by saying that Hindu Sabha was calling you to stop Cow slaughter and defeat Congress. In pamphlet K the words 'Hindu Dharma Ki Jai' and 'Gau Mata Ki Jai' are used. To constitute undue influence there should always be some compulsion. Though cow is an object of reverence for the Hindus the contents of the leaflets mentioned above do not appear to us to be capable of exerting undue influence on the mind of the voters. The words complained of appear to be used in the leaflets by way of a party manifesto. So far as O and S are concerned, we do not see any element of undue influence in them.

It is argued on behalf of the petitioner that leaflets I, J, K and S are issued under the names of persons, who have not given their consent. Firstly, there is no reliable evidence on this point, and secondly, even if we assume that prior consent of some of the signatories was not taken we are of the view, that this fact is not capable of causing undue influence on the minds of the voters. This issue stands decided against the petitioner.

Issue No. 7.—We have gone through the evidence of both the parties and we do not think that 'T' (Ex. 22) was distributed at Bhilsa, by respondent Nos. 1 and 2 or their agents. In fact, it appears that some students went from Gwalior and distributed these leaflets in connection with the Parliamentary seat hence no liability can be put on respondent Nos. 1 and 2 regarding this leaflet 'T' and we decide this issue against the petitioner.

Issue No. 8.—The publication of 'B' is admitted by respondent Nos. 1 and 2, of 'P' by respondent No. 2 and of 'Q' by respondent No 1. Leaflet 'T' is not proved to have been published or distributed by respondent Nos. 1 and 2, in connection with issue No. 7. The poster 'Q' filed by the petitioner has got the names of the Press and the publisher printed on it. The respondents have produced copies of leaflet 'B', *viz.*, Ex. A/9, A/15, A/24, A/26, A/30 and a copy of poster 'P' Ex. A/34 and have examined Laxmanrao Jadhav R.W. 9, Pyare Mohan R.W. 10 and Swaroop Kishore R.W. 15 to show that the leaflets and posters which they got printed had the names of the press on them, and it may be possible that these press lines may not be there on the leaflets produced by the petitioner because of over cutting or those copies being proof copies. We have gone through the evidence carefully and we are not impressed by it. The respondents did not produce these leaflets along with their written statements but have preferred to produce them with individual witness, when he came for evidence. We examined the five copies of 'B' produced by respondent and on comparison we found that the position and distance of the press line, from the main contents varied in each case so we conclude that the press line has been printed later on, on all the copies produced by respondents. Our conclusion is that leaflet 'B' and poster 'P' published by respondent Nos. 1 and 2 did not have the name of the printer on them. Thus the respondent Nos. 1 and 2 have committed illegal practice as specified in sub-section (3) of section 125 of the Representation of the People Act. To this extent we decide this issue in favour of the petitioner.

Issue No. 9.—According to the petitioner the systematic appeal to religion, caste etc., was made by respondent Nos. 1 and 2 through the publication of certain leaflets and also orally. We first deal with the appeal through leaflets. In this connection the leaflets referred to by the petitioner are B, C, E, E1, F, H, M, N, O, R and S. As respondent Nos. 1 and 2 are not found responsible for publishing the leaflets C, E, E1, in connection with other issues, we do not consider their contents. Leaflets N and O are admitted to have been published by respondent No. 2 and R, S and M by respondent No. 1, B by both of these respondents and F and H are proved to have been published by respondent No. 1 in connection with issue No. 4.

We have carefully gone into the contents of B, F, M, R and S and we are of view that there is no appeal to vote made in these leaflets on the basis of caste, religion or religious symbol. Though cow is an object of reverence to Hindus. She is not a symbol of Hindu religion. An appeal to save her could be on the grounds of her utility also.

Leaflet N (Ex. 31) is an appeal to voters to vote for respondent No. 2. The objected portions in this leaflet are—(a) Do not forget Chaturbhuj Chamhar who is born in the family of a devotee of Raidas.....Tell every body that we will elect only Chamhar brother (Subse Kahdo Ki Ham To Chamhar Bhai Ko Hi Member Chunenge).

(b) The Congress has foisted upon you a representative of Kori Caste who has not done any good to you and it again wants to have the same man of Kori Caste as your representative.

(c) I specially pray, Aharwar, Sakharwar Jatav brothers.....If you are born in Raidas Vansh.....have faith in your caste brother and vote for your caste brother who is standing on behalf of Hindu Maha Sabha (Hindu Maha Sabha Ki Taraf Se Khade Hone Wale Chamhar Bhai Ko Hi Vote Do). This member of Kori Jati has done no good.

From the above contents it is clear that respondent No. 2 has tried to emphasize that his opponent is a Kori, he himself is a Chamhar so those who are born in Raidas Vansh should vote for their Chamhar brother.

Leaflet 'O' Ex. 32 is also an appeal to vote for respondent No. 2 for Harijan Seat. The objected portions are—(i) why did not the Congress set up a candidate from our caste.

(ii) with a view to honour Raidas Vansh it is resolved in village Panchayats to elect caste brother Chaturbhuj Chamhar a Harijan candidate from Hindu Maha Sabha, (Biradari Bhai Chaturbhuj Chamhar Ko Hi Harijan Seat Ke Liye Member Chunenge) because the Congress has not set up any member of our caste. In this district there are 44,748 Chamhar brothers, whereas there are only 8,607 persons of Kori Caste. There are 12½ sub-sections in our Vansh, first Chamhar and then these sections.

(iii) why vote for Chaturbhuj? Because he belongs to our Raidas Vansh.

The above statement leaves no doubt that respondent No. 2 was appealing to Chamhar to vote for him, because he was his caste brother and his opponent respondent No. 7 was a Kori.

The learned counsel for respondents has tried to argue that the appeal made by respondent No. 2 in Ex 31 and 32 is not on the basis of caste but is made on the basis of professional brotherhood. We are unable to agree with the view. The words in the appeal made in Ex. 31 and 32 are quite clear. Respondent No. 2 has called himself Chaturbhuj Jatav in his written statement and has signed the written statement in the same name, but in Ex. 31 and 32 in every place he has called himself Chatur Bhuj Chamhar and has asked the voters to vote for this Chamhar brother. In Ex. 32 sufficient emphasis is laid on the fact that Congress candidate was a Kori and that the population of Chamhars was more than five times that of Kories.

After carefully considering the contents of Ex. 31 and 32 we are definitely of opinion that respondent No. 2 has made a systematic appeal to Chamhar voters to vote for him on the basis of his caste and has thus committed a minor corrupt practice as specified in sub-section (5) of section 124 of the Representation of the People Act.

In leaflet H (Ex. 38) there is some reference to vote for Chamhar Bhai but we do not think this leaflet of sufficient importance so far as this issue is concerned.

There is on record some oral evidence regarding appeal made for Hindu Sabha candidates orally on the basis of religion or caste, but we do not find it convincing.

Our conclusion is that respondent No. 2 is responsible for making a systematic appeal on the basis of caste by means of leaflets N and O, and to this extent we decide issue No. 9 in favour of the petitioner.

Issue No. 12.—The allegations regarding the election expenses are contained in para. 9(III) of the petition. Regarding sub-clauses (b) to (f) there is no evidence on record. In sub-clause (a) the allegations are that the amount spent on 3 posters and 10 leaflets has not been shown in the return of election expenses. On going through the file of the return of election expenses of respondent No. 1, we find

that the expenses of the three posters mentioned in para. 9(iii)(a) are included, in the return on page 1. In part E *i.e.*, on page 6 an amount of Rs. 67/11/3 has been shown as payment to different presses for printing charges. The petitioner has not been able to point out to us that charges of the leaflets complained of are not included in this amount In our view the allegations regarding the falsity of return of election expenses are not established and we decide this issue against the petitioner.

Issue No. 14.—Assuming the objection of the petitioner to be true the difference of votes would only be 39, which is not likely to affect the result of the election, hence we decide this issue against the petitioner.

Issue No. 15—As there is no material on record regarding the non-compliances and their effect we decide this issue against the petitioner.

Issue No. 16.—Jamuna Prasad Mukharaiya respondent No. 1 has been found to have committed a major corrupt practice as specified in sub-section (5) of section 123 of the Representation of the People Act (*vide* issue No. 4) and Chaturbhuj Jatav respondent No. 2 has been found to have committed a minor corrupt practice as specified in sub-section (5) of section 124 of the Representation of the People Act (*vide* issue No. 9), and both these respondents have committed illegal practice specified in sub-section (3) of section 125 of the Representation of the People Act. The election of respondent No. 1 is void under clause (b) of sub-section (2) of section 100 of the Representation of the People Act. In the case of respondent No 2, we find that his election has been procured by corrupt practice and it has materially affected the result of the election also. There were three Harijan candidates, Chaturbhuj Jatav (respondent No. 2), Hira Khusla Chamhar (respondent No. 5) and Sunnulal (respondent No. 7) and they polled 12,452; 601; 10,889 votes respectively. Respondent Nos. 2 and 5 both are Chamhars. The difference in their votes clearly indicates that Respondent No. 2 scored the votes of his community simply because he made an appeal on the basis of caste. It is significant to note here, that respondent No. 2 was a foreigner to Bhilsa Constituency. He has admitted in his statement that he went to Bhilsa for the first time in November, 1951 *i.e.*, just when he was chosen to stand as a candidate; whereas respondent No. 7 is resident of Bhilsa and has been working for Harijans for last 20 years. Taking into consideration all these things we are of opinion that the corrupt practice committed by respondent No. 2 has materially affected the result of the election and hence his election is void under clause (a) of sub-section (2) of section 100 of the Representation of the People Act.

The petitioner has claimed a declaration that respondent Nos. 6 and 7 are duly elected.

The difference between the votes of respondent Nos. 1 and 6 is 919 and that of 2 and 7 is 1,563. Considering the scandalous nature of false statement regarding respondent No. 6 and the mode of systematic appeal on the basis of caste made by respondent No. 2 we have no doubt in our minds that both these respondents Nos. 1 and 2, have got more votes simply because of their corrupt practices and if these corrupt practices had not been there respondents Nos. 6 and 7, undoubtedly would have obtained a majority of valid votes. Hence we declare the election of respondent Nos. 1 and 2, Dr. Jamunaprasad Mukharaiya and Chaturbhuj Jatav void and declare respondent Nos. 6 and 7, Shri Ram Sahai and Sunnulal to have been duly elected. Issue No. 16 is decided accordingly.

ORDER

In the result, we declare the election of respondent No. 1 Dr. Jamuna Prasad Mukharaiya and No. 2 Chaturbhuj Jatav void and further declare respondent No. 6 Shri Ram Sahai and No. 7 Sunnulal to have been duly elected

As required by section 99 of the Representation of the People Act we record our finding :—

That Dr. Jamuna Prasad Mukharaiya respondent No. 1 has himself committed the major corrupt practice, by publishing false statements, as specified under sub-section 5 of section 123 of the Representation of the People Act.

That Chaturbhuj Jatav respondent No. 2 has committed a minor corrupt practice by systematically appealing to the voters to vote on the basis of caste, as specified in sub-section (5) of section 124 of the Representation of the People Act.

That both respondents Dr. Jamuna Prasad Mukharaiya and Chaturbhuj Jatav have committed an illegal practice as specified in sub-section (3) of section 125 of the Representation of the People Act.

Looking to the facts of the case and the nature of evidence produced by the petitioner we fix Rs. 1000 as the cost of the petition, including Rs. 300 as pleader's fees. Respondent Nos 1 and 2 shall pay Rs 500 each to the petitioner as costs.

Particulars of costs of the Petitioner

	Rs.	As.	Ps.
(1) Stamp for Vakalatnamas	1	14	0
(2) Process Fees	50	0	0
(3) Miscellaneous Applications	1	0	0
(4) Diet money to witnesses (incurred Rs. 1198/15 9)	647 (awarded)	2	0
(5) Pleader's Fee.	300	0	0
TOTAL	1000	0	0

Dated Gwalior the 24th December 1953.

Pronounced in open Court

(Sd.) V. K DONGRE, *Chairman*,
Election Tribunal, Gwalior.

(Sd.) SURAJ BHAN, *Member*,
Election Tribunal, Gwalior.

(Sd.) BHAGWAN SWAROOP, *Member*,
Election Tribunal, Gwalior.

ANNEXURE 'A'

(Order dated the 19th December, 1952)

We have heard Mr. A. B. Mishra for respondent No. 1 and Mr. Shiv Dayal for the petitioner regarding issues Nos 1, 10 and 11.

Issue No. 1—This issue relates to three lists Nos. 1, 2 and 3 attached to the petition. The headings of the lists are:—

List No 1—List of Government Servants (Patels) as per annexures 'J', 'I', 'R', 'L', 'C', 'K'.

List No. 2—Datewise list of Bhilsa Constituency of Polling Stations.

List No. 3—List of Non-compliances.

All these three lists are not verified. The lists of particulars accompanying the petition are called annexures' by the petitioner and they are all from 'A' to 'T' verified by one verification at the foot of annexures 'R', 'S' and 'T' Mr. A. B Mishra for respondent No. 1 has contended that sub-section (2) of section 83 of R. P. Act provides for the verification of lists of particulars and not of annexures. The petitioner has not verified these three lists hence these lists could not be considered as part of the petition As Mr. Mishra's contention is based on the use of words annexure and lists, it is necessary to make it clear that all annexure from A to T are really lists of particulars and the petitioner has used the word annexure at the head of the lists for numbering and reference only. In each annexure, right in the beginning the petitioner has written 'List of Particulars' and the contents leave no doubt that all annexures are lists of particulars

Mr. Shiv Dayal for the petitioner has said before us that under sub-section (2) of section 83 of the R P. Act, only lists of particulars need to be verified and nothing else Particulars of corrupt and illegal practices are annexures which are duly verified and these three lists are only supplements of these annexures. Particulars are given in para. 8(4) of the petition and list No. 1 is part of para. No. 8. Similarly list No 3 is mentioned in para. No. 11 of the petition and list No. 2 in note No 1 of annexures R, S, T which are verified. Thus in short Mr. Shiv Dayal's contention is that as these lists are either mentioned in petition or they are supplements of annexures they do not need verification under section 83(2) of R P. Act separately.

Sub-section 1 of section 83 of the R. P. Act requires the petition to be verified in the manner laid down in the Civil Procedure Code. Sub-section (2) requires the petition to be accompanied by lists, verified in like manner, setting forth full particulars of any corrupt or illegal practice. This clearly means that the verification of the petition does not dispense with the necessity of verifying lists simply because the matter that should have been in the list under section 83(2) has been referred to in the petition. Hence our considered opinion is that the reference of these lists or their contents in the petition or annexure cannot help the petitioner.

In paragraph No. 8(4) of the petition it is alleged that respondent Nos 1 and 2 obtained and secured assistance of a number of Government Servants for the purpose of the furtherance of the election prospects of respondents Nos. 1 and 2, through the publication of four leaflets and one circular letter signed over by Patels (Village headmen) as per annexures 'I', 'J', 'C', 'K', 'R'. Part second of the paragraph says that the names of such servants (Patels) and the particulars of assistance taken from them and other details are set out in the list of particulars marked No. 1, enclosed herewith as a part of this petition.

Thus in the words of the petitioner himself list No. 1 is a list of particulars and Mr. Shiv Dayal's argument to this effect that list No. 1 is not list of particulars, is not supported by the contents of the petition itself.

In para. 8(4) the petitioner has alleged a major corrupt practice and so under sub-section (2) of section 83 of R. P. Act, he is required to give a list signed and verified setting forth full particulars. On persuing list No. 1, we find it only contains names of 40 persons who are said to be Government Servants. In this there is no reference to annexures 'I', 'J', 'C', 'K', 'L', 'R'. On going through these annexures we find that even in them there are no particular regarding the part played by persons named in list No. 1. Hence it cannot be said that list No. 1 is only a list of persons whose names and acts have come in annexures referred to.

As the petitioner has himself called list No. 1 as list of particulars. in para. No. 8(4) of the petition and from record it does not appear to be a supplementary list of persons mentioned in some other list of particular regarding these persons, we treat this list as list of particulars in connection with para. No. 8(4) of the petition. As this list is not verified according to sub-section 2 of section 83 of R. P. Act and we are reluctant to take it as verified by implication, we are of opinion that this list No. 1 cannot be considered for the purposes of this petition.

Sub-section 2 of section 83 of R. P. Act requires lists of full particulars only of corrupt and illegal practices. List No. 2 is a datewise list of polling stations and list No. 3 is a list of non-compliances. Both these lists do not relate to corrupt or illegal practices, hence in our view, they are not required to be verified and so they cannot be ignored for want of verification.

Thus we decide issue No. 1 with respect to list No. 1 in favour of the respondent and with respect to list Nos. 2 and 3 against him.

Issue No. 10.—In para. No. 8(1) of the petition it is alleged that certain leaflets were published to assure the electors that respondent No. 3 was not a genuine candidate of Ram Rajya Parishad and was contesting the election only for the benefit of the Congress Candidates in collusion with respondent No. 6

In para. No. 8(2) it is said that these leaflets were published, printed. read out, and explained in Bhilsa Constituency by respondent Nos. 1 and 2, their agents and other persons with the connivance of respondent Nos. 1 and 2 etc.

The contention of Mr. A. B. Mishra is that the allegations are vague, the petitioner has not alleged that the leaflets reached the public or they were distributed to the electors etc. According to sub-section 1 of section 83 of R. P Act the petition should contain a concise statement of material facts on which the petitioner relies. Full particulars in case of corrupt or illegal practices are to be set forth in lists of particulars. Mr. Mishra's objection relates to the insufficiency or vagueness of para. No 8 of the petition and he has drawn our attention to cases cited in D.E.C. Volume II on page 290 (Ambala North Sikh Rural Constituency S. Sampurna Singh *versus* Hon. S. Baldeosingh) and page 332 (North West Gurgaon Mohammedan Constituency Yasin Khan *versus* M. Ahmad Jan and others) in his support. These cases do not support his contention as they relate to particulars set forth in the lists and not to matters written in the petition, and thus they are not relevant to the points in question.

We have carefully gone through paragraph 8 of the petition and we find that the requirements of sub-section (1) of section 83 of R. P. Act are fulfilled and there is no vagueness or incompleteness as contended. Hence issue No. 10 is decided against the respondent.

Issue No. 11.—Mr Mishra's argument regarding this issue is practically the same as that for issue No. 10. He has said it is not mentioned where leaflets were distributed. Para No. 9 of the petition says that the systematic appeal has been made through the publication of certain leaflets and posters The particulars are given in the lists attached to leaflets mentioned under para. No. 9. According to sub-section 1 of section 83 of the R. P. Act, full particulars are not necessary in the petition. We don't find any force in the objection raised by the respondent, hence we decide issue No. 11 against the respondent. Dated the 19th December, 1952.

(Sd.) V. K. DONGRE, *Chairman*,
Election Tribunal, Gwalior.

(Sd.) SURAJ BHAN, *Member*,
Election Tribunal, Gwalior.

(Sd.) BHAGWAN SWAROOP, *Member*,
Election Tribunal, Gwalior.

ANNEXURE 'B'

(Order dated the 24th December, 1952).

We have heard the counsels of both the sides with regard to issue No. 13. The point for consideration is whether the recriminatory notice by respondent No. 1 presented at Gwalior on 4th September 1952 to one member of the Tribunal, is presented to the proper person within the time prescribed for it. On 4th September 1952 the respondent No. 1 Mr. Jamuna Prasad Mukharaiya presented the recriminatory notice to Shri Suraj Bhan, who is a member of the Election Tribunal, and he sent it under registered cover to the Chairman who received it on 11th September 1952. The Election Petition was published in Madhya Bharat Gazette dated the 21st August, 1952. According to section 97 of the R. P. Act, notice of recrimination should be given to the Tribunal within 14 days from the publication of the election petition under section 90. Section 86(5) of the R P. Act provides that the reference to the Tribunal as respects any matter to be done before the commencement of the trial be deemed to be reference to the Chairman of the Tribunal. According to this provision, the respondent No. 1 should have presented the recriminatory notice to the Chairman, as the trial of the petition had not started before the Tribunal.

Mr. Anand Bihari Mishra for the respondent, has produced a notice regarding the date of the hearing served on respondent No. 1 and has tried to argue that it gave an impression to his client that every thing regarding the petition is to be done in the Court of the District Judge, Gwalior. We have carefully gone through the words of the notice. It only says that the date of hearing is 13th October, 1952 and until other arrangement is made, the hearing will take place in the court of the District Judge, Gwalior. The respondent should give his written statement on or before this date. The notice does not give any indication that the respondent should give recriminatory notice at Gwalior. As the provision under section 86(5) is quite clear the respondent cannot derive any advantage by his ignorance of provisions of law or wrong impressions Mr. Mishra has cited A.I.R. 1931 Allahabad 507, but it has no bearing on the case. Hence we find that the recriminatory notice is not presented in time to the proper authority, with the result that the issue No. 13 is decided in favour of the petitioner and against respondent No. 1. Dated the 24th December, 1952.

(Sd.) V. K. DONGRE, *Chairman*,
Election Tribunal, Gwalior.

(Sd.) SURAJ BHAN, *Member*,
Election Tribunal, Gwalior.

(Sd.) BHAGWAN SWAROOP, *Member*,
Election Tribunal, Gwalior.

ANNEXURE 'C'

(Order dated the 29th January, 1953).

The petitioner has given an application on 24th December 1952 under section 83(3) of the R. P. Act for amendment of particulars in annexures I, J, C, K, R filed by him with the petition. The contents of the application are that certain Government Servants whose names were given in list No 1, which has been rejected for want of verification (by order dated 19th December 1952) and whose names are now given in the application, got pamphlet appended to annexures I, J. C, K, R printed, published and circulated in their names with the connivance of respondent Nos. 1 and 2 and their agents and they allowed the same pamphlets to be published in their names and also they orally published and propagated the contents of the pamphlets, in their own villages and adjoining villages after the printing, upto the time of poll.

We have heard counsels on both the sides regarding this application. From the contents of the application it is clear that the petitioner, in fact, now wants to add to the lists (I, J, C, K, R) particulars of a major corrupt practice mentioned in para. 8 of section 123 of the R. P. Act *viz.*, obtaining or procuring by a candidate or his agents or with their connivance any assistance for the furtherance of the prospects of the candidate's election from any person serving under Government of India or the Government of any State. Though a reference to this corrupt practice has been made by the petitioner in para. 8(4) of the petition, no particulars of this corrupt practice are given in any of the lists I, J, C, K, R as required by sub-section (2) of section 83 of the R. P. Act. In para 8(4) of the petition, it is said that details are set out in list of particulars, marked No. 1. This list does not contain any details of corrupt practice alleged in para. 8(4) of the petition, it only gives names of certain patels. Besides, this list has been rejected by our order dated the 19th December, 1952.

The point for consideration is whether the petitioner can be allowed to amend lists of particulars so as to introduce a new corrupt practice not mentioned in lists accompanying the petition under section 83(2) of the R. P. Act. Sub-section (2) of section 83 of the R P. Act is as follows:—

The petition shall be accompanied by a list signed and verified in like manner, setting forth full particulars of any corrupt or illegal practice, which the petitioner alleges including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of commission of each such practice.

Reading sub-sections 1 and 2 of section 83 of the R. P. Act together, it is quite clear that besides giving material facts in the petition, it is incumbent on the petitioner to set forth full particulars of each corrupt practice, in the list accompanying the petition and a reference in the petition to some corrupt practice cannot dispense with the list of full particulars, with regard to that practice.

Sub-section 3 of section 83 of the R. P. Act restricts the scope of amendment only to the extent of particulars included in the list.

This sub-section does not say that lists of particulars may be amended but says in very precise terms that the particulars included in the list may be amended. Looking to the plain wordings of the section, it appears that the power or discretion given under sub-section (3) of section 83 of the R. P. Act, to allow an amendment of particulars, should not be exercised where no particulars at all, regarding a certain corrupt practice have been given along with the petition under sub-section (2). If the plea of the petitioner that the corrupt practice about which the particulars are now sought to be amended, as mentioned in para. 8(4) of the petition is allowed, there would be no object, in prescribing under section 83(2) of the R.P. Act, a list setting forth full particulars.

The learned counsel for the petitioner has drawn our attention to cases cited in Doabia's Election Cases Volume I (1864-1935) page 108 and Volume I (1935-1950) page 1, and a recent judgment of the Hon'ble the High Court of Judicature at Bombay in Special Civil Appeal No. 2017 of 1952. We have gone through these cases carefully and our opinion is that these cases are not helpful to the petitioner in view of the clear wordings of sub-sections 2 and 3 of section 83 of the R. P. Act. As against the cases quoted by the petitioner in Kistna, First Case quoted in Doabia's Election Cases Volume I (1864-1935) page 467, it has been held that the rule says that particulars can be amended, it does not mean that the list of particulars can be amended. Adding to the particulars included in the list is not

amending them, because these original particulars are left just as they stood, quite unamended, and new ones are added. This will constitute amendment of the list and not of the particulars. Section 83(3) only permits particulars included in the list to be amended and not the list.

Considering the contents of the petitioner's application, the wordings of section 83(2), (3) of the R. P. Act and the cases brought to our notice, we are of opinion that the amendment sought by the petitioner should not be allowed and hence we reject the petitioner's application dated the 24th December, 1952.

(Sd.) V. K. DONGRE, *Chairman*,
Election Tribunal, Gwalior.

(Sd.) SURAJ BHAN, *Member*,
Election Tribunal, Gwalior.

(Sd.) BHAGWAN SWAROOP, *Member*,
Election Tribunal, Gwalior.

Dated the 29th January, 1953.

[No. 19/263/52-Elec.III/9518.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.

PRINTED IN INDIA BY THE MANAGER, GOVT. OF INDIA PRESS, NEW DELHI
AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1954